Q. You do not recall whether you were on such a committee during the period 1940 to 1942, do you? A.
1309 I do not recall definitely, but I believe that I was—I don't recall definitely.

Q. Were you ever an officer of the State Society? A. No.

Q. Were you ever on the Council? A. No.

Q. Were you ever on any of the committees? A. Yes.

Q. What committees? A. In 1949 I was on the Committee of Committees. Don't ask me what it means.

Q. You do not recall being on any other committees prior to that time? A. No.

Q. Are you a participating physician with the Oregon Physicians' Service? A. I am.

Q. When was your first connection with that service? A. Well, at or near its inception. I can't recall the date.

Q. Doctor, from what you say it would appear apparently that you had a just grievance against some of the commercial hospital associations, but it is true, is it not, that you would not have ceased cooperating with those associations if you had not believed that it was the medical society's policy that physicians should cease dealing with those associations? Is that not true? A. I would like to
1310 have that last question again, please.

Mr. Marcus: Would you read the question, please.

(Question read.)

A. No, that is not true. I think that any of us are influenced by what others in the same field are doing, what they believe. I think there is certainly some influence, but as far as I am concerned I made up my own mind as to what I would do and no one—I was not urged to do so by anyone. Does that answer your question?

Q. Yes, Doctor, but is that your present recollection of what you did? A. I didn't hear.

Q. Is that your present recollection as to why you broke away from the Society? A. Yes.

Q. I mean from the Association? A. Yes.

1311 Mr. Marcus:

Q. I show you Exhibit 610 and ask whether this refreshes your recollection. Does not that suggest that the question I asked you before should have been answered otherwise, Doctor? A. No, not exactly.

Q. Well, in this letter, Doctor, you wrote to the Oregon-American Lumber Company on December 15, 1941: "Gentlemen: More than one year ago action was taken by the Oregon State Medical Society condemning those physicians who serviced contracts issued by any hospital association other than those recommended by the Society. In conformity with this policy after February 1st, 1942 I will service only tickets issued by the Washington County division of the Multnomah Hospital Association or other physician-owned hospital associations."

Now, before asking you a question about that particular document, is it not true that you wrote a similar document to Carnation Lumber Company, which is marked Exhibit 31? I show you that to refresh your recollection.

Doctor, it is hardly likely, is it, that you could write two letters of this sort without believing the truth of what you wrote? It was your intention, was it not, to convey this information to the Carnation Lumber Company and the Oregon-American Lumber Company as to the reason why you were ceasing to have association with these hospital associations? A. In writing these—may I explain?

1312 Q. Certainly. A. In writing these letters, if I write such a letter I have to have some reason for it. I did not want to antagonize the owners of these large industrial enterprises. I did a lot of business for them. And I did not want to antagonize them, and I used everything that I could to justify the position that I was taking. But, nevertheless, the fact that a year had gone by, or such a matter, before I took any such action would indicate that I arrived at the decision to do this not as a result of those things but because I thought that it was the thing to do.

Q. You didn't think it would antagonize these companies to tell them that you were not going to treat any employees of theirs under the commercial hospital association contracts because that was what the Medical Society had told you to do? You did not think that that would antagonize them, is that correct? A. I felt that it would give my refusal a certain backing.

Q. Well, Doctor, didn't you think that these companies would take more kindly to your refusal if you stated that you had not been given full freedom to treat employees of theirs as you thought they should be treated rather than to tell them the reason you were ceasing to treat their employees under these contracts was because of the State Medical Society policy? Doctor, you seem to be a person

of some intelligence and that is why it is difficult
1313 for me to understand how you can give any such reason as that. Doesn't it seem to you that this is the kind of thing which would antagonize a company if they received such a letter? A. No, I don't think so. The company is not directly interested.

Q. Well, Doctor, have you read any of the press stories respecting the trial of this case last year? A. Not very much.

Q. You did notice, though, did you not, that there were representatives of a number of companies who did testify on behalf of the plaintiff?

Mr. Jaureguy: Well, I think that is an unfair question.

Mr. Marcus: Well, he has just been saying—I am trying to test the accuracy of his answer.

Mr. Jaureguy: Well, you have a perfect right to do that. But his question implies that the employers have come in here aligning themselves on the side of the Government, whereas I think to be fair counsel should say that every one of them was subpoenaed and came here because he was subpoenaed, and I think, while this may be argumentative, that some of the testimony that those employers gave did not aid the Government's case.

The Court: That is your view of it.

Mr. Jaureguy: So I therefore object to the intimation in his question.

1314 The Court: Ask another question, Mr. Marcus.

Mr. Jaureguy: I might say the employer from Washington County didn't particularly help the Government.

Mr. Marcus:

Q. Doctor, when you wrote this you thought there was such a policy, did you not; you didn't just conceive this out of your own head, did you? A. Me? Well, I certainly did. I don't have anyone else write them for me.

Q. What I mean is, you didn't conceive the idea that there was such a policy? A. Oh, you mean make that up?

Q. Yes. A. Oh, I think I had an intimation that there was such a policy.

Q. I see. And you have—let me ask you this, Doctor: Since the time you have been practicing in the State you have received the Northwest Medicine? A. Yes—you say I have received it?

Q. Yes. A. Yes.

Q. And I assume that that is one of the periodicals you do read? A. Occasionally.

Q. Now, Doctor, you have mentioned the Multnomah Industrial Health Association. You are aware, are you not, Doctor, that the regulations of that association re-
1315 quire that doctors cooperating with them agree not to deal with other hospital associations? A. I do not believe that is true.

Q. You do not believe that is true? A. No. I question it. May I just say that the reason that I do not believe it is true is because I continued to deal with those hospital associations all the time that I was working for Industrial, excepting that period of time, and never have had any such information given to me.

Mr. Marcus:

Q. Well, perhaps we are talking about two different things, Doctor. Are you referring to the Multnomah Industrial Hospital Association or the Multnomah Hospital Association? I am not trying to confuse you, Doctor; I am rather trying to clear up some confusion which arose out of your direct testimony. On your direct you referred to the Multnomah Industrial Health Association, but I believe by 1940 or '41, '42, that association no longer existed. Is that true?

Mr. Jaureguy: I think it was toward the end of '42. I am not certain.

Mr. Marcus:

Q. What I am trying to find out, Doctor, is whether you meant to refer to the Multnomah Industrial Health Association or not. A. Whether you have tried to or not, you have me confused now.

1316 Q. Well, the confusion is caused by your direct testimony, Doctor. A. Well, I am not—as you remember, I hesitated over the title of the hospital association that I referred to, and I don't recall the exact name.

Q. Well, I call your attention to Exhibit 216, which is the preliminary agreement signed by the physicians starting the Multnomah Industrial Health Association and call your attention to paragraph 4 at page 3. Does that appear to limit the participating doctors the way I have suggested? A. That states what you suggested, yes.

Q. Now, Doctor, did you ever have occasion to attend

a meeting of the Polk-Yamhill-Marion Society? A. No, I have not.

Q. Is your name Dr. Ray Walsh? A. No.

Q. I asked you a little while ago, Doctor, whether you were a member of the Washington County Medical Society in 1941, and you stated that you were not certain that meetings of that society were held in that year. Is that so? A. That is right.

Q. I show you Exhibit 1052 and ask you whether that refreshes your recollection. Does that refresh your recollection, Doctor? A. It would seem that I was there, from that.

Q. That there was a meeting held in April of 1941. It is stated in the minutes—I am reading from Exhibit
1317 1052—"Dr. Robb suggested that a letter be written to the Oregon State Medical Society asking the Society to write a letter to the leading employers in the community expressing the views and position of the physicians and the Oregon Medical Society in regards to the commercial hospital associations."

Now, Doctor, having refreshed your recollection of what occurred in that period, would you not now believe that at the time you wrote that letter the letter stated the facts as recited in that letter? A. I am sorry, I didn't get the import of that question.

Q. Well, Doctor, you appear to have written two letters in 1941 to two different concerns in which you state that because of Medical Society policy you were no longer going to deal with the hospital associations. Is that not so? A. I wrote those two letters, yes.

Q. After having refreshed your recollection as to what occurred at that period is it not true that those letters truthfully recited the reason why you ceased dealing with the Hospital Associations? A. No, that is not the case.

Q. Now, Doctor, it was certainly your expectation that these companies would believe that that was the reason you were ceasing to deal with the hospital associations, is that not so? A. I don't know. I don't know what they would believe.

1318 Q. You think they would doubt the reasons given by you in letters sent by you? Would they have any reason to believe that? A. I didn't say so.

Q. Now, Doctor, if the reasons given by you were not the correct reasons would you not expect that the Medical Societies might have taken action against you for giving a false reason which implicated them? A. I haven't had

any reason to fear any action by the Medical Societies.

Q. And that was probably because what you said was true?

Doctor, you say you have been since 1942 or '43, have been cooperating with these hospital associations. A. Yes.

Q. So that there was a period merely of about two years when you did not cooperate? A. Approximately that. I don't recall just how long.

Q. Have you had any dealings with the Prudential Hospital Association? A. Not that I recall.

Q. You have testified that there were certain things in your association with these hospital associations prior to 1941 which you did not like. You have no reason to believe that if you had taken these matters up with the directors or general managers of these associations that those matters could not have been rectified, have you? A.
1319 Yes, I have.

Q. You testified that you had a conversation with Mr. Bechtold within two years or so after you ceased doing business with them and at that time he told you that the matters you raised could be taken care of; is that not so? A. That is right.

Q. Did you ever have a talk of that sort with Dr. Moore of Industrial? A. I have talked with Dr. Moore of Industrial, but I don't recall that I have talked to him about that particular problem. I had tried at various times to get some of these things straightened out with National. I talked with both Mr. Page and Mr. Bechtold and they always were full of promises, but due to the routine of the office the promises were not fulfilled.

Q. Well, your primary concern or complaint then was that with respect to specialists, they would choose a specialist and you would hear no more, is that correct? A. That was one of the complaints.

The Court: Court is adjourned until 10:00 o'clock tomorrow morning.

(Whereupon, at 3:55 P.M., the trial of the above entitled Cause was adjourned to 10:00 o'clock A.M. on the following day.)

1320 TUESDAY, JANUARY 24, 1950, at the hour of 10:00 o'clock A.M. the following further proceedings were had in the trial herein.

The Court: Proceed.

Mr. Marcus: Your Honor, at the termination of yesterday's proceedings Dr. Waltz was on the stand. At his request we are continuing his cross examination until Wednesday.

I would like at this time to bring up the question of the defendants' documents. As I understood the procedure, we in the first place were to put in our documents and then to state the purposes for which they were put in, and that was done. Now, your Honor, I would like to ask whether the same procedure is to be followed with respect to the defendants' documents.

The Court: What is your plan, Mr. Jaureguy?

Mr. Jaureguy: Well, I hadn't made any plans. In fact, I have no preference. I certainly would be pleased to offer them all now or to wait until some later time, whichever either the Court or counsel thinks is preferable.

The Court: Put them all in, Mr. Jaureguy.

Mr. Marcus: Subject to our objection. With the exception of this, your Honor: I have told Mr. Jaureguy we will not object to authenticity, and am I to understand
1321 that Mr. Jaureguy will state the purposes for which the documents are put in and then we will file our objections?

The Court: I don't remember how you did that before.

Mr. Marcus: That is the way we did it.

Mr. Jaureguy: I have no objection to following the same procedure. The great bulk of our documents start with No. 2501 and proceed from there on. I don't have the last one right now—2751. In addition, however, I have eight or nine I would like to read into the record and it will take me just a minute, and that is the Nos. 1854 and 1872 to 1876, inclusive, and 1935 to 1937.

Now, while I am on my feet I can say I spoke to counsel yesterday about a letter which I have received, and I am handing it to him now, from the Insurance Commissioner of the State of California dated January 6, 1950, and he is going to read it and let me know whether he will admit that if the writer was called he would testify as shown in the letter.

Should I call a witness?

The Court: Yes.

Mr. Jaureguy: Call Dr. Fowler.

1322 FRANK E. FOWLER was thereupon produced as a witness in behalf of Defendants and, being duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Jaureguy:

Q. Would you give us your name, please? A. Frank E. Fowler.

Q. Where do you live? A. Astoria, Oregon.

Q. And how long have you been there? A. Twenty-five years.

Q. And what is your occupation? A. Physician and and surgeon.

Q. And how long have you been a physician and surgeon? A. Since 1923.

Q. '23. And where have you practiced? A. When I finished my internship I practiced in Astoria from 1925 to the present time except for the three years I was away in military service.

Q. Could you tell us when those three years were? A. I entered the Army in September, 1942 and was discharged in August, 1945.

Q. And were you absent from the State at that time?

A. The entire time, yes, sir.

1323 Q. And what medical school did you attend?

A. Harvard Medical School.

Q. And you finished there when? A. 1923.

Q. Now, when you started to practice medicine in Astoria were some of the patients in that district under commercial hospital association plans? A. Yes. Both National and Industrial Hospital Associations had contracts in Clatsop County.

Q. And were there any doctors in Astoria that had any particular connections with the Industrial? A. Well, I believe that the Industrial Hospital Association was organized in Astoria. I think Dr. Pilkington was one of the original founders.

Mr. Marcus. Your Honor, I move to strike that out unless it is based upon personal knowledge; and I would like to make the same objection with respect to the line of questioning as to this doctor's experiences with these hospital associations as I made with respect to Dr. Durno and the preceding defendants' witnesses.

The Court: The testimony is admitted subject to objection and the motion to strike is denied.

Mr. Jaureguy:

Q. The evidence also shows in this case that Dr. Van Dusen was a stockholder of Industrial. A. Yes,
1324 sir, he was. I did not know whether he was one of the original founders or not.

Q. And were Dr. Pilkington and Dr. Van Dusen practicing in Astoria during this period of time? A. They were practicing there when I came to town.

Q. Now, were Drs. Pilkington and Van Dusen members —first I better ask you whether you were a member of the Clatsop County Medical Society. A. Yes, sir.

Q. And that continued,—that started when? A. In 1925 I believe when I arrived in Astoria.

Q. And are you now a member? A. Yes, sir.

Q. And have you continuously been a member? A. Yes, I have, except for the three years I was away.

Q. And what about Dr. Pilkington? A. Dr. Pilkington was a member of the Clatsop County Medical Society, yes, sir.

Q. Up to the time of his death? A. Yes.

Q. And Dr. Van Dusen? A. Yes.

Q. And were either of those doctors officers of the society at any time? A. Well, I remember that Dr. Van Dusen was President of the Society at one time.

1325 Q. Now, was there any discrimination shown in in the Clatsop County Medical Society against either Dr. Pilkington or Dr. Van Dusen on account of their partial ownership of the hospital association?

Mr. Marcus: Objection, your Honor, unless this witness can state he knows of his knowledge.

The Court: Objection overruled.

A. I can state positively there was none.

Mr. Jaureguy:

Q. Well, I want to ask you if you attended meetings of the Clatsop County Medical Society. A. Yes, sir.

Q. And was that attendance regular or just now and then? A. Now and then—I mean, some years we would have quite regular meetings and other years we would not, be slack.

Q. What I mean is, when they had meetings did you attend them? A. Yes.

Q. Regularly? A. Yes.

Q. I mean, did you attend the meetings that they had? A. Yes, I always did.

Q. So you can say there was no discrimination against either doctor on account of their connection with this association? A. Yes, indeed.

Q. And when you started practicing in Astoria did you endeavor to get on the panel of either of these asso-
1326 ciations? A. No, not when I started.

Q. And at some later time did you? A. I went on, I presume you would call it, the panel of the National in 1929 I believe.

Q. Did you make an effort to get on the panel of the Industrial? A. Yes, in 1932 or thereabouts, during the depression, for two reasons. I went to Dr. Pilkington and asked if I could be on the panel because I needed the work, and secondly because at that time there were a lot of logging contracts in Clatsop County and there was lots of industrial surgery which I was ambitious to do.

Q. And did you get on the panel? A. Not then.

Q. And did you ever get on the panel? A. Later they came to me.

Q. And then did you do work for the National and Industrial? A. Yes, I did.

Q. And was there ever any discrimination against you by the Medical Society by reason of that? A. There was none.

Q. Or did the Medical Society ever suggest to you that you don't do that? A. They did not.

Q. Now, calling your attention to the spring of 1939. Do you have any recollection of any action taken by
1327 the Medical Society with respect to hospital associations at that time? A. Well, at that time the Society decided that there should be, that all doctors of Clatsop County should be on the panel, and that was the desire. At the same time there had always been an unsatisfactory payment of fees by the associations. They would pay some men $1 and somebody else $2, and there was rarely any uniformity of fees, and there was always considerable controversy over some of your fees. So the County appointed a liaison committee, of which I was a member, to meet with Mr. Bechtold and Mr. Kirk and with Dr. Dammasch of the Multnomah Medical Service Bureau, I believe they called it. It was a Multnomah County group. And we had several meetings with Mr. Kirk, Mr. Bechtold and Dr. Dammasch and worked out with Mr. Kirk and with Mr. Bechtold a satisfactory fee schedule, and at the

same time all of the doctors practicing in Clastop County were placed on the panel—I mean they were eligible to care for National and Industrial cases. Dr. Dammasch wouldn't agree to our fee schedule so we refused to take care of any of their cases except on a private-patient basis.

Q. And do you remember the resolution of the Society to the effect that the doctors of Clatsop County would work for the National and Industrial but not for the other one? A. Well, that is a long time ago, but I know that was the case, and as I—if I recall correctly, every doctor in the county signed an agreement to that extent.

1328 Q. Then did that plan to take care of the patients of the Multnomah County Medical Service Bureau only as private patients, did that continue permanently or was that changed? A. As I recall, in three or four months Dr. Dammasch also agreed to the fee schedule, and then I believe that the Society went on record as agreeing to also accept their tickets.

Q. Now, you went into the service when? A. In 1942.

Q. And up to the time you went into the service were you accepting tickets of those three, of the National and Industrial— A. Yes.

Q. And as long as the Multnomah Medical Service Bureau was operating there were you accepting their tickets? A. Yes. They had very few contracts, but we accepted their tickets.

Q. Then when you you came back from the service, since you have come back have you accepted the tickets? A. I have not.

Q. And was that due to any action of any Medical Society? A. No, sir,

Q. That was just—was that your personal choice or did some other doctor consult with you or what? A. Well, my brother and I practiced together and have since 1939, and when I returned from the service he had de-

1329 cided not to accept the tickets of any hospital association except the OPS.

Q. And are you on the OPS panel? A. Yes, sir.

Q. And your brother too? A. Yes, sir.

Q. I want to give you some names here and ask you whether they are names of doctors practicing in Clatsop county. I am taking these names from Plaintiff's Exhibit 1853. Anson G. Allen.

The Court: What is the point of this?

Mr. Jaureguy: 1853 is a document that counsel put in evidence as doctors—it is headed I think in the handwriting of one of the attorneys—doctors who we have evidence of refusing tickets other than IHA and who Brunkow says refused IHA also. There are 80 names there including the clinic. Two of them are from the State of Washington. And I want to question the witness about some of them there that are listed at Clatsop County.

Q. Do you know Dr. Anson G. Allen? A. Dr. Allen died in August of last year.

Mr. Marcus: Well, your Honor, now I want to make an objection because I can't see any relevance at all.

The Court: How did it get in the case? Why did you put it in?

Mr. Marcus: We put it in to show during this 1330 period of the complaint these doctors were refusing tickets. Now, the fact that the doctor died about a year ago,—and I suppose the contention would be made that, of course, he could not physically be in a position to decide whether to refuse tickets since that time is not relevant to the fact of whether during some time during this period he refused tickets.

Mr. Jaureguy: Well, if counsel will state that this list of doctors merely means that these doctors at some time from 1936 up to the time he introduced this in evidence, at some time refused to take tickets, and does not mean that he was refusing to take tickets currently, then I will cease asking questions on it, but I don't understand that that was what the evidence was when he put it in. I understood that this purported to be a list of doctors currently refusing to take tickets.

Mr. Marcus: It states what it purports to be at the top.

Mr. Jaureguy: That is exactly why I am asking the questions.

Q. Dr. Benjamin Lund.

Mr. Marcus: Well, has there been a ruling?

The Court: Yes. I rule against you.

Mr. Jaureguy: I didn't get the ruling, your Honor.

The Court: Continue, continue.

Mr. Jaureguy:

Q. Dr. Benjamin Lund of Astoria. A. He is no longer practicing in Astoria.

Q. How long has he been gone, do you know?
1331 A. I would say a year, maybe eighteen months.
Q. Dr. Duncan A. McLauchlan of Astoria? A. He is no longer practicing in Astoria.
Q. T. Matthews? A. I don't know of any doctor by that name who has practiced in Clatsop County.
Q. Well, do you know all the doctors in Astoria? A. I do, yes.
Q. And is he in Astoria? A. He is not in Astoria now.
Q. That is, you can say definitely he is not a doctor in Astoria and you don't think there is any doctor in Clatsop County by that name? A. I do not recall any.
Q. Now, the Medical Arts Clinic, what is that?
A. Well, that is a group that at one time consisted of Dr. Kullberg and Dr. Lund and Dr. McLauchlan, whom you mentioned. Now it is composed of a Dr. Kullberg and a Dr. Parlova.
Q. D. C. Prentiss? A. He hasn't been there for years. At the time he was there he was not in private practice. He was doing X-ray work at the St. Mary's Hospital.
Q. Mervin H. Smith? A. Dr. Smith has retired.
Q. How long has he been retired, do you know?
1332 A. Well, I don't know whether it was before or after or during the war. I am not sure.
Q. Somewhere along in that period? A. Yes.
Q. And are you acquainted with Drs. Smiley and Bauer? A. Yes.
Q. And where have they practiced? A. Well, Dr. Smiley first practiced at Westport where Industrial Hospital Association has a contract.
Q. You mean he was working full time for the Industrial? A. Well, I think he had private patient privileges as well, but his setup was entirely sponsored by Industrial, and he since has moved to Astoria, and now Dr. Bauer is practicing at Westport under the same setup.
Q. And has there been any discrimination against them by the Clatsop County Medical Society by reason of their employment by Industrial Hospital Association? A. They are both members of Clatsop County Medical Society and they are also on the staff of both hospitals.
Q. And has there been any discrimination in any way at all by the Society against them? A. Not to my knowledge.

Mr. Jaureguy: You may take the witness.

1333 Cross Examination

By Mr. Marcus:

Q. Doctor, on cross examination of Plaintiff's witnesses, counsel for the defendants challenged the contention of some of our witnesses that the fees should be uniform.

Mr. Jaureguy: I move that be stricken.

Mr. Marcus:

Q. The contention was made that a doctor, we will say, with ten of fifteen years experience might be entitled to more than, say, a doctor of one year's experience. And I gather from what you have said that you would disagree with that contention at least with respect to pre-paid medical care, is that not so?

Mr. Jaureguy: I move all comments of counsel be stricken. Not the proper way to cross examine the witness.

The Court: The motion is denied. Do you remember the question?

A. No. Will you read that?

(Last question read)

A. I don't know how to answer that. I think that in the matter of fees that the most desirable method would always be a personal relation contact between the patient and the doctor. Now, I don't know how to answer the rest of that.

Mr. Marcus:

Q. Well, Doctor, on direct testimony you stated that you and several other doctors took up with these associations the question of having uniformity of fees. You
1334 didn't like the idea that apparently some doctors were receiving one fee and other doctors were receiving another fee, and that is why I am asking you this question. Did you not feel that under the pre-paid medical plan the proper method was to have a uniform fee schedule?
1335 A. I would like to answer it this way: I would say in our dealings with the hospital associations we felt that a standard fee schedule should be adopted.

Q. Yes. A. That is, in dealing with the two people we were dealing with.

Q. Have you been an officer of the Clatsop County Medical Society at any time? A. Yes, I have.

Q. Could you tell us what offices you have held and the

period during which those offices have been held? A. I now have been president because that office is usually passed around through the years, but what year I was president I don't know. I would guess it to be in the early '30s.

Q. You wouldn't know whether it was or not? A. No, not positively.

Q. At any time since 1936? A. I cannot testify positively about that. It is a matter of record, I suppose, but I just don't know.

Q. It might have been since that period, as far as you can tell? A. I can't tell you exactly when it was, but I have been president a couple of times. I can check the records if you want me to.

Q. I believe we have some records as to the the
1336 offices held in the Clatsop County Medical Society.

We can check those. Have you been on any committees of that Society? A. Yes, I have.

Q. Do you recall the names of any of those committees? A. The only one really that I recall is the liaison committee which I testified concerning before. That was a committee appointed to work out a program.

Q. Have you ever been a delegate to the State Medical Society? A. I have been on the Council of the Oregon State Medical Society, but I don't believe I have ever been a delegate from Clatsop County.

Q. Would you say whether you have been on the Council of the State Medical Society at any time since 1936? A. No, it was before that. I believe my last term of office might have overlapped into 1937 or 1938, but I am not sure.

Q. Have you ever held any office with the State Medical Society? A. That is all.

Q. Have you ever been on any other committees of that Society? A. Oh, not of any significance, no. There is always a long string of committees on hospital standardization and other things of that sort and I have served on them, but just what I don't know.

Q. I suppose since you have been in practice you have been receiving Northwest Medicine? A. I have.

1337 Q. You mentioned that you have offices with your brother? A. That is right.

Q. Could you give us his full name? A. Vernon E. Fowler.

Q. To your knowledge, has he ever been an officer of the Clatsop County Medical Society? A. Yes, he was president.

Q. Do you know whether he has ever been a delegate to the State Society? A. I don't believe that he has.

Q. Has he ever been on the Council of the State Society? A. No, He has not.

Q. Or on any of its committees? A. Not to my knowledge.

Q. You have testified that around 1939, I believe, a resolution was passed by the Clatsop County Medical Society approving of the Society members dealing with the National and Industrial hospital associations because those associations were in agreement with the Society as to the fees to be charged. Is that not so? A. Yes, sir.

Q. To your knowledge, did the State Society take any action with respect to that resolution? A. Not to my knowledge.

Q. Do you recall the date of the meeting of the
1338 Clatsop County Medical Society at which this resolution you have mentioned was passed? A. No.

Q. I would not expect you to. A. No.

Q. Would you look at Exhibit 425, in order to refresh your memory? What date? A. May 12th.

Q. May 12th? A. Yes.

Q. Now, Doctor, I would like to call your attention to the following paragraph in the minutes of the Clatsop County Medical Society of June 9, 1939:

"Dr. Hagmier reported on the May meeting of the Council of the Oregon State Medical Society, with particular reference to the discussion regarding the action of the Clatsop County Medical Society. He strongly urged, in view of his not being able to attend the June meeting of the Council, that the Society appoint a member to be our local representative at the Council meeting in order that any misunderstanding of our recent action be eliminated."

Do you recall that? A. May I see the minutes? Well, I naturally recall it because I am quite sure it occurred at that meeting.

Q. And that it did occur after the date at which
1339 the resolution was passed? Now, I call your attention to the minutes of July 12, 1939, of the Clatsop County Medical Society at which it was stated:

"Communication from Dr. Charles E. Sears, President of the Oregon State Medical Society, dated July 8th, in regard to the recent action of the Clatsop County Medical

Society attempting to control contract hospital association practice was read.

"Motion was made by Dr. Van Dusen that the State Council be asked to send representativesof the Bureau of Medical Economics to Astoria to meet with the Clatsop County Medical Society, to discuss problems of contract practice in Clatsop County. The motion was duly seconded and carried. Dr. Spalding was designated to aid the secretary in formulating a letter to the State Council making this request."

Do you recall that? A. Only because you have read it from the minutes. I don't remember those things. That is a long time ago. You understand that.

Q. Is your memory refreshed— A. I am sure that occurred, if that is what you want to know.

Q. Is your memory being refreshed that the State Society did take some action with respect to that resolution?

A. By what you are reading, yes.

1340 Q. When did you say you entered the service?

A. 1942.

Q. Do you recall the Clatsop County Medical Society taking any action prior to the time you went into service deterring doctors of the Society from dealing with the National or Industrial hospital associations? A. I don't believe that the Clatsop County Medical Society ever took such action against anyone at any time.

Q. You are not certain about that, are you? A. I am as positive as I can be.

Q. Doctor, you were not one of the representatives of the Society appointed at that time to confer with the State Society with respect to that resolution? A. Which resolution do you have reference to?

Q. The resolution by which the members of the Society agreed to deal with Industrial and National hospital associations. A. You mean, was I a member of the committee that the Clatsop County Society was to appoint?

Q. Were you at any time prior to the time you went into the service designated as one of the representatives of the Clatsop County group to confer with the State Society with respect to that resolution? A. The resolution of Clatsop County in accepting National and Industrial?

Q. Yes. A. I don't know that such a committee

1341 was ever appointed.

Q. I am not asking you whether such a committee

was ever appointed or not, but I am asking you whether you were ever designated as one of the persons or the person to take up that matter with the State Society?

Mr. Jaureguy: Then, your Honor, I will object to the question if he objects to the answer, on the ground that it assumes something not in evidence.

The Court: Overruled.

A. The only answer I can give is the one I have given. I don't know whether a committee of that sort was appointed or not. I am inclined to think it was not.

Mr. Marcus:

Q. Were you ever designated? I am asking you whether you were ever designated? That is a simple question. A. Not to my knowledge.

Q. You have no personal knowledge as to whether or not the State Society took action with respect to that resolution? A. I think the only action I would have any knowledge of is what appeared in the minutes of the Society, and that was not very serious action.

Q. I notice that the resolution we have been referring to relates to the National Hospital Association and the Industrial Hospital Association. Was the matter of the Prudential Hospital Association brought up at that time?

A. I don't believe it was. Now, it is possible it
1342 could have been, but Prudential has never been active in Clatsop County, and I don't remember—I am inclined to think they might have been.

Q. You say when you returned from the service you gave up dealing with hospital associations and became a participating physician with OPS? A. Yes.

Q. You stated that your brother, at the time of your return, was a member of the Oregon Physicians' Service and it was largely on that basis that you went over to OPS and gave up dealing with these other associations? A. Well, I think I would put it this way: When I returned, my brother advised me from the point of view of our office the situation with regard to National and Industrial had not worked out too well, and that he felt it had been wise to accept those patients as private patients and consider the coverage which they had as we would consider insurance coverage that many patients have.

Q. Didn't he tell you at that time that he believed it was

the policy of the Medical Society that you should treat subscribers of the hospital associations as private patients? A. I don't recall that he worded it that way. Anyhow, I have told you just about the way I think it worked out. That was in 1945. I was just back from the service and my memory is not too clear on it.

1343 Q. That was one of the matters that was probably discussed at that time, was it not? A. Between my brother and myself?

Q. Yes. A. I don't remember.

Q. It might have been, isn't that so? A. I can't speculate. That is guesswork. I can't speculate about that.

Q. When you came back from service, I suppose you renewed your membership with the Clatsop County Medical Society, did you not? A. Yes.

Q. I suppose in a general way you became acquainted with any policies they had adopted during the period you were in service? A. Well, I don't think that the Society adopted any policies when I was in service. As a general rule, county societies are not very active. I can't recall any statements made to me concerning any policy adopted by the Society.

Q. You were acquainted, however, with the feeling in Astoria with respect to prepaid medical care organizations, were you not? A. I don't know that the Society, as such, had any feeling on it. It was largely individual—

Q. Well, but you—

Mr. Jaureguy: Let the witness answer. You are

1344 interrupting all the time.

Mr. Marcus:

Q. You have just stated that you attended meetings of the Society regularly.

Mr. Jaureguy: Before the witness answers that question, I wish the witness would have an opportunity to finish his answer to the preceding question.

Mr. Marcus: Go ahead.

A. Well, I said I don't think the Society ever was active in formulating a policy—policies of any sort, and I think the matter of caring for hospital association cases was a matter of individual doctors' preference, which I think the practice of medicine always should be.

Q. I suppose you will agree that the minutes of the So-

ciety would show what, if anything, was done with respect to effecting a policy on these hospital associations, as far as the Society is concerned?

Mr. Jaureguy: I will object to that unless Counsel shows the witness the minutes.

The Court: Answer.

A. I would have to see the minutes to answer.

Mr. Marcus:

Q. Well, I understood you to say a while ago that the minutes would show what occurred.

Mr. Jaureguy: The witness was referring to minutes only that have been shown him.

Mr. Marcus: Referred to minutes generally.

A. I am not trying to evade your question, Mr. Marcus. I am trying to answer as intelligently as I can. I can't state to you what the minutes would show for the three years that I was away or the minutes of meetings that I might have missed. The minutes of any society usually show what business is transacted by the society.

1345

Q. Am I right in assuming that there have been things about the operations of all these prepaid medical care organizations with whom you have dealt from time to time which you have disliked? A. I lost the last part of that. Did you say "disliked?"

The Court: Yes.

A. I don't think that any of these prepaid medical care plans are entirely satisfactory.

Mr. Marcus: That is all.

Redirect Examinations

By Mr. Jaureguy:

Q. I don't understand your statement that none of these prepaid medical care plans are entirely satisfactory. You mean there are defects in the systems of prepaid medical care plans? A. That is what I mean, yes.

Q. Do you draw any distinction between prepaid medical care plans, as such, and indemnity insurance? A. Well, of course, my feeling is that some type of indemnity in-

surance is the most satisfactory method of antici-
1346 pating illness. This is my personal opinion I am giving you. Under any other prepaid medical care plan, as I have seen it operate in Oregon, there was a great dislike for lay-owned groups, because the matter of the patient's illness was entirely taken out of the patient's hands; it became a matter between the doctor and the association.

Q. You say it was taken out of the patient's hands? A. I mean the welfare of the patient was taken out of the doctor's hands. It no longer became a matter of the doctor thinking what is best for that patient. You, first of all, had to obtain permission to do what you thought was best for the patient. Then, under the Oregon Physicians' Service, which is more or less a doctors' own created organization, you at least have a hand in correcting defects.

Q. Under the present type of contracts with National and Industrial, which on their face at least are indemnity contracts, when a person comes in who is entitled to the protection of one of those contracts how do you take care of those patients? Do you kick them out of the office, or do you treat them? A. No, we never refuse to treat anyone. We will take care of them as private patients; and when the care is completed we render them a bill. Usually, if they have that type of coverage, the association wants a diagnosis. Sometimes the diagnosis is simply written on the statement we give the patient, as we do for many in-
surance companies; in other instances forms are
1347 filled out which are requested by the association.

Q. You say many insurance companies or with other types of insurance companies. Have doctors ever been in the habit of sending them bills directly rather than giving the bills to the patients? A. I don't think a doctor feels that a third party ever has the right to contract for his services without his consent. We don't make contracts with any of these other companies. We take care of the people as private patients and give them the reports that they want, or that the insurance companies may demand. Our relationship is always with the patient.

Q. When you said you take care of members of the National and Industrial hospital associations the same as any other insurance company, you mean the same as you have always taken care of persons who had insurance contracts with other insurance companies? A. Yes.

Q. Mr. Marcus was asking you about fee schedules of

prepaid medical care plans. That requires me to ask you a little bit about the fees of doctors generally, where there isn't any prepaid medical care plan involved.

In setting fees do you feel that a doctor with experience is entitled to charge a larger fee than an inexperienced doctor? A. I think fees should be charged according to the service rendered and the patient's ability to pay.

1348

Q. The patient's ability to pay? A. Yes.

Q. Would you say, then, in treating patients generally you should have one fee for fractures, or do you think the nature of the fracture and the seriousness of it and the amount of work involved should have something to do with it? A. That, of course, would be the most desirable way to do it. In State Accident Commission cases we are forced to adhere to a certain fee schedule.

Q. I am speaking about where there is nothing of that type involved, just private patients. A. Oh, yes. I think you should always adjust your fee to the service you have rendered and the complications of the case.

Q. The difficulties of the case? A. That is right.

Q. And the skill of the doctor? A. Well, I think we have to assume that all doctors are skillful.

Q. I think that is so, particularly in public like this. Some doctors are specialists in certain lines. Do you think they are entitled to better fees? A. Do I think so?

Q. No; do the specialists think so? A. Well, of course, a man who becomes a specialist has spent a good many years more in training than the average man.

1349

A man who is going to become a specialist in dermatology, the skin, is going to spend from three to five years more in training than the average general practitioner is, and he is certainly entitled to more compensation for his services.

Mr. Jaureguy: That will be all.

Recross Examination

By Mr. Marcus:

Q. You abide by the OPS fee schedules, do you not? A. Yes.

Q. They are standardized, are they not? A. I assume, yes, they are. There is a book or schedule put out.

Q. There have been times since your association with OPS that OPS has not paid the full amount of the doctor's bill in your county? Is that not so? A. That is right.

Mr. Marcus: That is all.
Mr. Jaureguy: That is all.

(Witness excused.)

1350 DR. THOMAS E. GRIFFITH was thereupon produced as a witness on behalf of Defendants and, being first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Jaureguy:

Q. Would you give us your name, please. A. Thomas E. Griffith.

Q. What is your occupation? A. I am a physician.

Q. Where do you live, Doctor? A. The Dalles, Oregon.

Q. You have been practicing medicine how long?

A. About forty-one years.

Q. Where have you practiced? A. Practiced in Washington, D.C., and in The Dalles, Oregon, or in Oregon, except during the first World War, when I was in the Army.

Q. You have been in The Dalles since sometime before the first World War? A. Yes, I came to The Dalles in 1912.

Q. Aside from service in the Army, you have been there continuously since then? A. Well, I was away from 1914 until about 1920.

Q. Have you been associated with other doctors
1351 in The Dalles in a clinic of some kind? A. Yes, I have.

Q. What is the name of the organization? A. Well, it is The Dalles Clinic.

Q. Was Dr. Thompson Coberth a member of that clinic at any time? A. Yes.

Q. You were associated with Dr. Coberth in that clinic for how long? A. Since 1929 I have been with the clinic. I was employed by them in 1925, about four years, and entered into the partnership in the clinic in 1929.

Q. Dr. Coberth was a member of the clinic at the time of his death? A. Yes.

Q. Do you recall when he died? A. I think three years ago.

The Court: Take the morning recess.

(Recess.)

1352 Mr. Jaureguy:

Q. I think you told me you might have made a slight mistake in the time of the death of Dr. Coberth? A. I did. It was in January of 1946, four years ago.

Q. Now, during the time that you have been there in The Dalles have you had any occasion to treat members of the commerical hospital associations? A. Yes.

Mr. Marcus: Your Honor, I want to make same objection with respect to this testimony as to other witnesses.

The Court: It will be admitted subject to the objection.

Mr. Jaureguy:

Q. And with which hospital associations has it been, do you recall? A. Well, we have had those from the Prudential and from the National Hospital.

Q. And I wish you would just give us your experience in your taking care of their members and whether it's been satisfactory all the time or whether you have some criticism of it. A. Well, it was not entirely satisfactory because of the fee schedule; in other words, an individual would come in, a patient would come in and ask for a physical examination and you would probably spend an hour or so in a complete physical and then they would present a National Hospital slip, for which we got a fee of about $1.50, which was all they allowed in those days, in the early days, for the first visit whether it included an examination or not.

1353 Q. The first visit of $1.50 whether it was an examination or whether it wasn't examination? A. Yes. And then it was not satisfactory because in settlement of those bills, why, they deducted a certain percentage, in some cases as much as 33⅓ per cent and some cases less.

Q. That is, when you would send in this bill for this examination and for various other things there would be a discount on it? A. A discount.

Q. And that continued over what period of time, would you say, Doctor? A. That continued over a period of, I think, a matter of several years, when we decided to accept them as patients, to charge them as we would our ordinary patients and we would gave them a receipted bill which they could present this bill to their association.

Q. And do you recall when that was that you came to that decision? A. That was in the latter part of the thirties, I think around '38 or '39.

Q. And how long did you continue that practice? A. Well, that continued for quite a little while, for a matter of at least two years.

Q. Then you went back to taking tickets? A. We did not go back to taking tickets. It was a longer period
1354 than three years, I am quite sure. It's very difficult to recall, but we accepted tickets later after an adjustment had been made in the fee schedule.

Q. Do you know when that was? A. I cannot name you the year in which that was done because—

Q. I beg pardon? A. I cannot name the year that that was done.

Q. Well, now, you remember that Dr. Coberth was President of the Society, A. Yes, Dr. Coberth was President of the State Society.

Q. State Medical Society. A. Yes.

Q. And with respect to when he was President, was it before or after or during his term of office? A. It was before his term of office.

Q. And how was that new arrangement worked out? Was it correspondence or personal interview or what? A. To my knowledge it was the rseult of a personal interview with Mr. Bechtold and Dr. Coberth.

Q. Was that in Portland or at The Dalles? A. Well, it was both in Portland, and on one occasion Mr. Bechtold made a trip to The Dalles.

Q. Now, what was the practice in those days with respect to operating on patients? Was there any necessity for consulting with the National for that? A. It
1355 was. On several occasions, once an emergency patient I remember, they had to, they couldn't proceed until they had permission from Mr. Bechtold, called the National Hospital Association, and I think on the phone Mr. Bechtold finally answered Dr. Coberth and gave authority.

Mr. Marcus: Well, your Honor, I move to strike that out unless this witness was on the same telephone. It has to be hearsay.

The Court: Read it, Mr. Reporter. I didn't hear it.

(Last question and answer read.)

The Court: Motion denied.

Mr. Jaureguy:

Q. Now, you have given that one illustration. Is that an isolated case? A. No. There were several cases.

Q. Within your own knowledge? A. Within my own knowledge.

Q. Some of your patients that you were taking care of yourself? A. Yes. On one occasion I had to call Mr. Bechtold to get permission to proceed—laboratory facilities which would be a little more expensive—before I could go ahead with the patient.

Q. Well, now, how did you learn that it was necessary to consult with Mr. Bechtold before you could go through these tests or perform these operations? A. Well, our bills were not paid.

1356 Q. You mean they weren't paid if you didn't get those? A. No, they were not paid very promptly. There was a good deal of correspondence concerning them, and I think we were informed that sanction of Mr. Bechtold or the National Hospital should be had before proceeding with the operation.

Q. Now, these discounts that you speak about, what types of charges did they cover? I mean, did they just cover doctor bills or hospital bills or— A. They covered both hospital and doctor bills.

Q. What about X-rays? A. X-rays too.

Q. And the X-ray charges that you made to the National, how did they compare with the X-ray charges that you generally charged? A. They were the same as the general charges.

Q. And the discounts were put on? A. Discounts were put on.

Q. During this time have you had some connection with a hospital? A. Have I had some connection with a hospital?

Q. Yes. A. Yes.

Q. And which hospital is that? A. It is now The Dalles General Hospital. It was then The Dalles Hospital.

1357 Q. And who owned The Dalles Hospital? A. In the beginning The Dalles Hospital was owned by Drs. Reuter, Thompson, Coberth and Griffith.

Q. And that continued until when? A. That continued until 1944 or 1945. I think 1944.

Q. So the doctors who were associated as The Dalles Clinic also owned The Dalles Hospital? A. Up until 1944.

Q. Now, did the National Hospital Association have a contract with the Kinzua Lumber Company, do you recall that? A. Yes.

Q. And how did they take care of the patients there? A. They had a male nurse there who was caring for their

patients, and there was a doctor who was called occasionally who lived in a town about twenty miles away.

Q. Where was the Kinzua Lumber Company mill located with respect to The Dalles? A. I don't know the exact distance. It is over a hundred miles from The Dalles.

Q. Now— A. It must be about 140 or 150 miles. You have to go out of Fossil.

The Court: It is east of Condon and Mitchell?

A. Yes.

The Court: East of Condon and Fossil.

1358 A. East of Condon and Fossil.

Mr. Jaureguy:

Q. Now, after Dr. Coberth made these arrangements with Mr. Bechtold did The Dalles Hospital get members from the Kinzua mill? A. Yes.

Q. And took care of them pursuant to that arrangement? A. It was the desire of the patrons of the National Hospital at Kinzua to come to the hospital at The Dalles, but unfortunately at one time we got very few of them. They were directed to the other hospital. And after this interview the patients came there.

Q. What led you to say that it was the desire of the employees of the Kinzua mill to go to The Dalles Hospital? A. Well, many times they would desire to come there but they were directed to another hospital, patrons of the National.

Mr. Marcus: I object to that, your Honor, on the ground it is purely hearsay.

The Court: How do you know it is?

Mr. Marcus: On the basis of what he says it is purely hearsay. He has not been asked whether he personally knows.

Mr. Jaureguy: I agree with you. Let counsel take care of it.

Q. How do you know that the patients want to go to The Dalles Hospital? A. Well, I heard it directly from the patients.

1359 Q. Now, these decisions that your group, you and Dr. Coberth and the others, made with respect taking to tickets and not taking tickets and arrangements with Mr. Bechtold, was any of that the result of any suggestion or direction of any medical society? A. No.

Q. That is, they were your own decisions? A. They were our own decisions within the group.

Q. Now, have you ever been an officer of the State Medical Society? A. Yes, sir. I was President of the State Medical Society in 1930 and '31.

Q. And you belong to the Mid-Columbia Medical Society? A. I do.

Q. And do either of those societies tell you or suggest to you how you should handle these cases? A. No.

Q. Now, at the present time does your clinic take the tickets of National or Industrial? A. We do.

Q. And how long has that been going on? A. At least for the past three years.

Q. And are you cooperating physicians with the OPS? A. Yes, sir.

Q. That is, you take the tickets of all of them?
1360 A. Take the tickets of all of them.

Q. And do you make any discrimination in the treatment of patients whether they belong to one or the other? A. No.

Q. Have you during this period of time, have you treated employees who were under the Industrial Accident Commission but there was a contract by the Commission with National or Industrial? A. Would you repeat that? I missed part of it.

Q. Have you had any cases where the National Hospital Association had a contract with the Industrial Accident Commission to take care of the cases falling under the Workmen's Compensation Act? A. I am quite sure that we have because, you see, I am internal medicine and many of the accident cases that come under the Accident Commission I do not see.

Q. Dr. Vogt would be better able to testify on that? A. Dr. Vogt, the orthopedic surgeon, would be better able to testify on that.

Mr. Jaureguy: You may take the witness.

Cross Examination

By Mr. Marcus:

Q. Doctor, have you been a member of any other Oregon medical society other than the State Society and the Mid-Columbia? A. Why, do you mean an Oregon branch of the National Society?

Q. Well, it could be put that way. Your local
1361 county societies? A. I belong to the American Heart Society. I was a member of the North Pediatric Society.

Q. No. I am referring particularly to county societies. A. I belong to the Mid-Columbia Society, the medical society, and the State Society.

Q. Could you tell us what the Mid-Columbia County Medical Society covers in geographical area? A. Yes. It covers, its membership is from Hood River and Wasco County, and at one time Sherman County, but there are no physicians in Sherman County at the present time, so it covers the Mid-Columbia area and the north area.

Q. Doctor, have you held any offices with the Mid-Columbia County Medical Society? A. I cannot answer that. I think under protest on one occasion I was Secretary.

Q. Do you recall about what period that was? A. Well, that was one or two or three years before the war, the latter part of the thirties.

The Court: Are there any other of those adjacent counties without doctors now? You named Sherman.

A. Sherman County has no doctor. Gilliam County has a physician at the present time.

The Court: One?

A. One.

The Court: Wheeler?

1362 A. Wheeler County has a doctor up there.

The Court: Morrow?

A. There is no doctor in Moro.

Mr. Marcus:

Q. Doctor, I suppose since you have been practicing you have been receiving the Northwest Medicine? A. Yes.

Q. Doctor, you have spoken of a period when I believe one or more of these hospital associations was paying about $1.50 for a first office visit. Could you tell us the particular period? A. I can't tell you the particular period. It was in the—it was during the thirties.

Q. Would you say it was the early thirties? A. No. I know that it was around—yes, in the early thirties and extended through for several years.

Q. Now, Doctor, in your testimony on direct examination I was not clear in my mind whether you were testifying with respect to yourself or with respect to The Dalles Clinic. Could you clear that up? A. Well, I was testify-

ing in respect to myself concerning some patients that I saw, and both as to the action of the Clinic.

Q. That is both? A. Both.

Q. Now, Doctor, you said on direct, I believe, that you thought The Dalles Clinic ceased to accept tickets from the Prudential and National sometime in the thirties.

1363 A. It would be impossible for me to give you the exact dates or even the year. It was in the latter part of the thirties, I feel that it was. I may be mistaken.

Q. You may be mistaken? A. I may be mistaken.

Q. Doctor, I show you Exhibit 859 and ask you will you kindly read this exhibit and see whether it refreshes your recollection as to the time when The Dalles ceased to accept tickets of these associations? A. I recall the occasion of this letter.

Q. And what is the date of that letter, Doctor? A. March 17, 1944.

Q. And does that refresh your recollection? A. Yes, it does.

Q. So that the date was in 1944, was it not? A. Yes. That was the Prudential.

Q. Now, Doctor, you stated that on occasion these associations would not pay the bills sent to them in full, is that right? A. I would like to be more specific and say that that is in particular with the National, particularly with the National Hospital Association.

Q. Particularly with the National Hospital Association. Well, Doctor, do you know whether you or the Clinic had occasion to take up with the National the particular items that were cut down? You didn't just accept that

1364 without saying or doing anything did you? A. That portion of the work was delegated to Dr. Coberth and the office manager and I cannot mention, at least I cannot answer your question directly.

Q. So you would not know whether or not the Clinic took up those disputed items and whether or not at least in some cases full payment was eventually made, can you? A. I cannot specifically answer, but I feel that generally and in general they did.

Q. It is true, Doctor, that in some instances where a bill was disputed by the National that it might have been with respect to the coverage or whether or not the particular ailment or particular treatment came within the contract? A. Will you repeat that again?

Q. Well, my question is whether it is not true that in a number of the instances where the National questioned the

amount of the bill that was sent to them, whether or not they questioned it with respect to whether under their contracts with subscribers the particular treatment or the particular ailment came within their coverage. A. I am quite sure that they all came within their coverage.

Q. Well, do you know or do you not know, Doctor? You don't know whether or not the National questioned whether or not some of these accounts came within the coverage? A. I can't recall any specific inquiries
1365 or letters from them concerning that feature.

Q. That would have gone to the business side of the office? A. That would have gone to the business side of the office and to the doctor immediately concerned.

Q. Now, Doctor, I understand you are a participating physician of the OPS; is that not so? A. Yes.

Q. Now, Doctor, what has your experience or the experience of The Dalles Clinic been with OPS with respect to getting full payment? A. As a whole it's been satisfactory.

Q. But from time to time full payment has not been given, is that not right? A. There have been times when the pool has been a little low; that is, the payments in our pool, when many patients have been admitted and expensive hospital care, why,—.

Q. In those instances full payment has not been forthcoming, is that not so? A. Yes, that is so.

Q. Now, Doctor, you have mentioned the matter of having to take up with National the question of whether or not you should treat particular patients. That was with respect to whether or not they would have liability for
that treatment, is that not so? A. I don't under-
1366 stand it that way. The only questions that I took up with National were in connection with examinations that required some special laboratory analysis which would be of a more expensive nature, and I therefore would have to get their permission.

Q. But the reason you raised that question and the reason Mr. Bechtold or someone else in the association talked to you about it was with respect to whether or not the Association was going to pay for that, is that not true? A. Yes.

Q. Now, Doctor, with respect to OPS—that is the Oregon Physicians' Service—it is true, is it not, that they also require prior authorization in many types of cases? A. I think that is true, although the physician is allowed discretionary measures of treatment and the procedures.

Q. Well, Doctor, I am reading from Exhibit 438, which is a meeting of the Board of Directors of the Oregon Physicians' Service—it is true, is it not, that they also merely one paragraph and then ask whether you are familiar with this particular resolution:

"Consideration was given to the necessity for reporting by cooperating physicians of all cases involving sizable expenditures. A motion was duly carried that all OPS cooperating physicians be notified in the name of the Board of Directors that effective immediately all
1367 surgical cases and all medical cases involving probable expenditures in excess of $25 per case combined total of medical and allied expense involved be reported to the proper OPS office before services are rendered, with emergency cases to be excepted; that this procedure is essential to the fair and effective administration of the OPS plan; that instructions for the reporting of cases be incorporated in the next printed fee schedule; that by order of the Board of Directors bills for cases in this category will not be paid until such time as adequate case reports are filed with the proper OPS office."

Was that resolution ever brought to your attention, Doctor? A. Not particularly that I can recall.

Q. Now, Doctor, with respect to this matter of authorization, it is true, is it not, that although National did instruct or desire that you and The Dalles Clinic acquaint them with the nature of any case of some consequence before you went ahead with that case, that they did actually pay The Dalles Clinic and you in cases where prior authorization had not been obtained even though they questioned the fact that you had not asked for prior authorization? A. That would have to be referred to the business manager.

Q. To the business office. I see. Now, Doctor, I take it you are not sure in your own mind as to the time
1368 when The Dalles Clinic again began to deal with these hospital associations. A. I am not sure of the date.

Q. You are not sure. Doctor, have you ever been on any committees of the State Medical Society? A. No. I was a member of the Council. I was on the Committee for Credentials on one occasion at one of the annual meet-
1369 ings.

Q. Perhaps you have forgotten. Let me show you Exhibit 316 and ask whether that refreshes your memory? A. I beg your pardon. I was on the Veterans Affairs Committee.

Mr. Jaureguy: I didn't get the name of the committee.

A. Veterans Affairs.

Mr. Jaureguy: What year was that?

A. That was in 1949.

Mr. Marcus: No, that is not the year.

A. 1937.

Q. 1937? A. Yes.

Mr. Jaureguy: 1937, not 1949.

A. Yes, not 1949.

Mr. Jaureguy: That is pretty close anyhow.

Mr. Marcus: That is all.

Redirect Examination

By Mr. Jaureguy:

Q. You were shown an exhibit which I understand was or is a photostatic copy of a letter written by Dr. Coberth of The Dalles Clinic to the Prudential Hospital Association in 1944. A. It was written by the office manager, Mr. Sims.

Q. I do not understand your testimony now as to whether that is the only time you refused to take tickets or whether on some prior occasion you had refused to take tickets from the National? A. On prior occasions we had, I 1370 think, refused to take tickets, but not—

Q. On that prior occasion was that addressed to hospital associations generally or was it to just National on that occassion? A. National.

Q. In 1944, when that letter was written to Prudential, was that written to several or just to Prudential? A. I think it was just written to Prudential. However, I do not recall any particular action taken by the clinic on any other hospital organization at that time save the Prudential.

Mr. Jaureguy: That is all.

Recross Examination

By Mr. Marcus:

Q. As I gather, Doctor, you believe that prior to 1944 the clinic had ceased to deal with National, but in 1944

they also ceased to deal with Prudential, is that right? A. They have been accepting Prudential tickets, and then right along—I can't say— how long that period lasted I can't say.

Q. Coming back to my question, my question is: To the best of your knowledge, as I gather from what you have just said, you believe that prior to 1944 the clinic had refused to accept National tickets, and in 1944 they determined to refuse Prudential tickets? A. Yes.

1371 However, they accepted National—I would like to make this clear, that they accepted National's later after the conversation and the conference between Dr. Coberth and Bechtold.

Mr. Marcus: That is all.

Redirect Examination

By Mr. Jaureguy:

Q. And that conference, you told us, was sometime before 1944, so when the letter was written to Prudential you were at that time taking tickets from National? A. Yes.

Q. And had been for some time? A. Yes.

Recross Examination

By Mr. Marcus:

Q. Well, I am thoroughly confused, now. Was it your statement in 1944 you took tickets from National? A. We were taking tickets from National, I am quite sure, in 1944.

The Court: All right, Doctor. That is all.

(Witness excused.)

Mr. Jaureguy: I just told Dr. Vogt it would be all

1372 right for him to take some records up there to refer to. If the Court thinks it is desirable, I will put marks on them, but they are just for the purpose of illustration.

Dr. Paul Vogt was thereupon produced as a witness on behalf of Defendants and, being first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Jaureguy:

Q. Would you give us your full name, please. A. Paul Vogt.

Q. Where do you live? A. The Dalles.

Q. You have been there how long? A. In the practice of medicine?

Q. Well, how long have you been in The Dalles? How long have you lived there? A. I was born there.

Q. What is your occupation? A. Physician.

Q. And you are practicing in The Dalles? A. Yes.

Q. How long have you been practicing in The
1373 Dalles? A. From 1937 to 1940. Then I was away in the service until 1945, in September, when I returned, and have been there since.

Q. Where did you attend medical school? A. University of Oregon.

Q. You went to The Dalles immediately after your graduation? A. After my hospital year.

Q. Your hospital service was where? A. In St. Paul, Minnesota.

Q. In The Dalles have you been a member of any group of doctors associated in a clinic? A. From 1937 to 1940 I was an employe of The Dalles Clinic, and since returning in 1945 I have been a partner.

Q. That is the same clinic that Dr. Griffith, who has just testified, has been a member of? A. The same clinic.

Q. You and he at the present time are in that clinic? A. Yes.

Q. Do you remember Dr. Thompson Coberth being a member of that clinic, too? A. Yes.

Q. From 1937 to 1940 and then from 1945 to the present time, as I understand it, you have been there? A. Yes.

Q. As a member of the clinic are you engaged in gen-
eral practice, or do you divide up your work? A.
1374 I do mostly traumatic work, some general surgery.

Q. Have you had experience there in The Dalles in connection with commercial hospital associations? A. Yes.

Q. I wonder if you can outline to us, as near as you can recall, the times since you have been there that you and the other doctors have taken tickets of these hospital associations, and the times you have not?

Mr. Jaureguy: I would like to make the same objection to this line of testimony as made with respect to Dr. Durno and to the other physicians.

The Court: The testimony will be admitted, subject to the objection.

A. From 1937 to 1940 I believe we did work for the National Hospital Association and the other hospital associations, but there was considerable dissatisfaction and discussion amongst ourselves—

Mr. Jaureguy:

Q. We will come back to that. I want you to outline, if you don't mind, so that we can get a clear picture here as to when that did and did not take place, when they did and did not take tickets. In 1940 you went into the service? A. Yes.

Q. So you do not know what happened there except what you might have been told? A. Yes.

1375 Q. You came back in 1945? A. 1945.

Q. What was the situation when you came back? A. When I came back we were taking tickets in all, or of all hospital associations, and have continued to do so since without interruption.

Q. Has there ever been any suggestion or direction from any medical society, either local or state, that you should not take tickets? A. No.

Q. Whatever decisions have been made have been the decisions of the doctors in the clinic solely? A. Correct.

Q. You said there was certain dissatisfaction. I wish you would explain what that was, what your experience has been. A. Well, that is in reference to the three years during which I practiced before going into the Army. At that time the dissatisfaction was as regards fee schedules presented and percentage of payment of that fee schedule.

Q. How was that handled? You say percentage of payment of the fee schedule? A. It was handled in this manner: The fee schedule was established and at the time of payment that was discounted.

Mr. Marcus: I do not like to interrupt but, since the preceding witness on cross examination testified that
1376 he had nothing to do with the bills, I would want to make an objection to the testimony of this witness if this doctor has had no acquaintance with the bills; so I would like to ask permission to ask him a specific question at this time.

The Court: It is not necessary. Overruled.

Mr. Jaureguy:

Q. Did you bring any records with you that indicate and illustrate this discount system? A. In order to refresh my memory, I have had the office manager look up some old bills.

At that time the clinic was interested in the operation of the hospital as well as medical practice, and we looked up some old bills both as regards hospital and medical practice.

It seems that the rates paid the hospital were basically those paid by the State Industrial Accident Commission at that time, less 10 per cent. I believe that was the percentage. I may be off a little. Generally speaking, these records show the medical fees were discounted 25 to 33-1/3 per cent.

Q. I wonder if you would refer to those records and give us specific illustrations? A. These are just—

Mr. Marcus: Your Honor, I would like to point out that we have never been afforded an opportunity of looking at these records.

The Court: You will in ten minutes. Go ahead.

A. These are just the ledger sheets on bills pre-
1377 sented by the National Hospital Association on different patients.

Mr. Jaureguy:

Q. It is not necessary for you to give the names of the patients, Doctor. A. No. The first one here is one bill of $108.50, involving a number of different procedures including a thyroidectomy. The cash payment was $75.00, by discount $28.50.

Q. Is that an itemized bill? A. Yes.

Q. Just give us the details of it. Talk louder, if you can. A. This involved treatment from December 21, 1936, to April 13, 1937,—to February 26, 1937, in which a bill of $108.50 was accumulated, and on that bill was paid $75.00. $100.00 of that bill is the fee apparently on the basis of their schedule for a thyroidectomy.

Q. I beg your pardon? A. $100.00 of that $108.50 was based apparently on the fee schedule for a thyroidectomy, operative procedure.

Q. What fee schedule was that? A. Apparently the National Hospital Association.

Q. You have others there? You have several sheets there? A. Yes.

Q. Do all of them show the discount that was taken? A. Well, yes, I believe they all do.

Q. Was there any relationship between the fees you were then paid by the National Hospital Association and the fee schedule of the State Industrial Accident
1378 Commission? A. I couldn't tell you that because I have not compared the two and, secondly, the State Industrial Accident Commission usually covers traumatic work and the National Hospital Association covers medical services, so that they do not entirely overlap.

Q. You mean you never handled any traumatic cases for National? A. Yes, you do. You handle off-work accident cases, but they don't make up the majority of the work. As I say, I have not compared their schedules, so I could not tell you.

Q. What I am getting at is: Was there any practice of taking the Industrial Accident Commission's schedule and discounting it 25 per cent or something of that kind? A. As regards medical or surgical fees?

Mr. Marcus: Objection, unless he personally knows.

Mr. Jaureguy:

Q. In regard to either of them, tell us what you know.

The Court: Overruled. Both objections are overruled. Ask a question, Mr. Jaureguy.

A. I think with regard to hospitals the State Industrial rates for room charges were allowed by the National Hospital Association, subject to a 10-per cent discount.

By Mr. Jaureguy:

Q. The charges that a hospital made to the State Industrial Accident Commission, how did they compare with charges made to private patients? A. I couldn't
1379 tell you that.

The Court: Did you people own the hospital at the time you are talking about?

A. Yes, at that time, from 1937 to 1940. It was in 1944 when the hospital was separated.

Mr. Marcus: 1944? A. Yes.

Mr. Jaureguy:

Q. On the medical work, either surgical or otherwise, was there ever any comparison on any basis of the State Industrial Accident Commission fees when payments were made by National? Tell us what you know about that, if you know.

Mr. Marcus: The doctor has already testified he doesn't know anything about that.

The Court: Objection overruled.

A. I couldn't tell you exactly.

Mr. Jaureguy:

Q. Did your clinic ever take care of cases where the National Hospital Association had a contract with the State Industrial Accident Commission to take care of State Industrial Accident Commission cases? A. To my knowledge, we have not done any of that since the war, and before the war we did very little of it. We saw very little of that type of thing, because I do not believe in our vicinity they had any contracts like that.

Mr. Jaureguy:

Q. So, do I understand you, then, that you have
1380 no information as to how the fees were set in cases of that kind? A. That is correct, because we do not have that relationship.

Q. Do you know whether the National requires that authorization be obtained before operations or before any extensive work? A. Yes, they do. They requested that you call their office for authorization prior to procedure—prior to proceeding.

Q. Did you have experiences of that kind yourself? A. Yes, I have.

Mr. Jaureguy: You may take the witness.

Cross Examination

By Mr. Marcus:

Q. Are you a member of the State Medical Society? A. Yes.

Q. And how long have you been a member? A. Since 1937.

The Court: You will let him see these records?

Mr. Jaureguy: Surely

The Court: During the noon hour?

Mr. Jaureguy: I just wondered, before your Honor left: Would it be satisfactory for him to send you these records later, or will you be here?

Mr. Marcus: The witness will be here.

Mr. Jaureguy: Oh, yes. You have not cross-
1381 examined him yet. I am out of order. You have got to stay.

The Court: That is the reason I was recessing at this time, so he may look at them.

(Thereupon a recess was taken until 2:00 o'clock P. M.)

1382 AFTERNOON SESSION

Court reconvened at 2:00 o'clock P. M., pursuant to recess.

DR. PAUL R. VOGT resumed the stand as a witness in behalf of Defendants and testified further as follows:

Cross Examination

By Mr. Marcus:

Q. Doctor, from these documents which you brought with you it would appear, would it not, that The Dalles Clinic and Hospital dealt directly with the National Hospital Association between 1935 and 1941, in each of those years? A. I didn't check all the data there, but they did deal directly according to those records.

Q. Well, I would appreciate if you would look over this data.

The Court: No, don't take the time of the witness. Pull him off and put another witness on if you want him to go over the data. He can go down and look at them. Put on another witness, Mr. Jaureguy.

(Witness temporarily excused.)

Mr. Jaureguy: Dr. McLean.

1383 EDWARD H. MCLEAN, one of Defendants herein, was thereupon produced as a witness in behalf of Defendants and, being first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Jaureguy:

Q. Will you give us your name, please? A. Edward H. McLean.

Q. And where do you live? A. Oregon City.

Q. And you have lived there for how long? A. Thirty years.

Q. And what is your occupation? A. Physician and surgeon.

Q. You have been practicing medicine for how long? A. Pardon?

Q. You have been practicing medicine for how long? A. I received my diploma in 1912. That would make it thirty-seven or thirty-eight years.

Q. You are one of the individual defendants in this case? A. I am.

Q. And have you ever been an officer of the State Medical Society? A. Yes. In 1944 and '45 I was President of the Society. The year before that I was First Vice-President.

Q. And have you been on the Council? A. I
1384 have been on the Council since 1941, I believe, in the fall.

Q. Now, while you have been practicing medicine have you ever taken care of patients for commercial hospital associations? A. Yes.

Q. Which ones? A. Practically all of them, mainly the Industrial and the National.

Q. And how long did that continue, can you tell us? A. That continued until about 1936 or '37, I have forgotten just which.

Q. And about when did it start? A. Pardon?

Q. About when did it start? A. It started somewhere in the early twenties.

Q. Will you tell us about your experiences with those associations, the extent to which your experiences were satisfactory and in any respect in which they may have been unsatisfactory.

Mr. Marcus: Objection, your Honor, on the ground of irrelevancy.

The Court: The testimony will be admitted subject to the objection.

A. Shall I proceed?

Mr. Jaureguy:

Q. Yes. A. When I first came to Oregon City the one hospital association that concerned us most was the
1385 National Hospital Association. They had contracts with organizations such as the constructing groups that were building highways and bridges, and so forth, and they as a rule had certain doctors that took care of their work. The rest of us were not concerned. Sometime along about 1927 or '8 the National Hospital Association began to send patients to me. In general my relations were fairly satisfactory except that we had to accept certain fees that were below the fees that we should have accepted, and there was a certain tendency to tell us how we could handle our patients.

Q. Well, can you elaborate on that, that tendency to tell you how to handle your patients? A. We had to ask permission to do certain things and sometimes they would ask us to try other things first before we tried out procedures that were operative or expensive, and we very frequently were allowed, given permission, to do something on a patient and then later on we were told that they didn't feel they should cover that and we would be left holding the sack.

Mr. Marcus: I would like to know what the word "they" refers to, if the doctor is testifying as to himself or a group of persons.

Mr. Jaureguy: And I think he should also specify whether it means a hospital association or—

1386 A. "They" would mean the managers of the National Hospital Association, which was the one we were dealing with at that time, at the time we are referring to. "We" refers to our office. I at that time had two men, another man in the office.

Mr. Jaureguy:

Q. And you say when you speak of these directions as to how to treat the patient and you refer to "they" as the manager of the National Hospital Association? A. That is true.

Q. At any time was this manager or the man who gave

you directions, was he a member of the medical profession? A. No, he was not.

Q. Who was it? A. Usually Mr. Bechtold or somebody that was associated with him.

Q. And you say sometimes they would suggest that you first try one line of treatment rather than another? A. That is right.

Q. Would the line of treatment as suggested ever be a more expensive one than the one they wanted you to delay? A. Usually not. That was usually the reason for trying that treatment.

Q. All right, now, and you say that they required you to obtain authorization before you could— A. We had to have authorization before we could do operative procedures or procedures beyond minor sums unless those
1387 cases were emergencies. In the case of acute appendicitis or an intestinal obstruction we went ahead and did the work without authorization, especially if it occurred when the office was not open.

Q. And whenever there was any operative procedure or things of that kind to be done did you always do it or did you sometimes have somebody else do it? A. Usually in my case I did it because I didn't permit the other thing—I mean I stood—

Q. Do you know what the practice was among other doctors? A. I understand from other doctors—

Mr. Marcus: Objection, your Honor, on the ground of hearsay.

The Court: Just tell what you know, Doctor McLean, what you know personally.

A. What I know personally?

The Court: Yes.

A. Occasionally I was asked to send my case into Portland, but as a rule I did my own work.

Mr. Jaureguy:

Q. On those cases that you were asked to send to Portland, were they cases that you did or did not feel that you were qualified to handle? A. They were cases that I was qualified to handle. If they were cases I felt I was not qualified to handle I asked to send them into
1388 Portland.

Q. All right, now, you have discussed the matter of fees and the matter of them interfering with the man-

ner in which you treat the patient. Was there anything else that occurred in this time? A. Up to 1930 my relations were thoroughly pleasant except that I was not practicing medicine in the way that I thought medicine should be practiced. Beginning with 1930 a different situation arose.

Q. Well, pardon these constant interruptions, Doctor, but what was the reason for your not practicing medicine the way it ought to be practiced? A. Simply because there was lay direction of a medical matter.

Q. You mean by this manager? A. That is right.

Q. Pardon the interruption. You said up to 1930, why, otherwise it was all right. A. Along about 1930 the large paper mills which are in Oregon City requested that there be some form of off-the-job medical and surgical coverage. A group of us in Oregon City formed an association or a partnership to take care of that. We were unable to get the contract because the Industrial Hospital Association seemed to have more influence with the management than we had and they got the contract. They got a contract also with the—not only with the Crown-Willamette, but with the Hawley Pulp & Paper Company. There was a peculiar difference between those two organizations.

1389 The Hawley Pulp & Paper Company had an organization of employees which was—I have forgotten the name of it—but they had a rather close interest in the care of the patient and what was going on. My office and another office refused to accept the care of those patients and we stayed out of the program. The program did not go along very well, especially at the Hawley Pulp & Paper Company, and Mr. Kirk waited upon us, those of us who had stayed out, and made some overtures which seemed to be favorable that we accept their services and accept their contract, and we did so.

From that time on all of us in the town were, in Oregon City, were servicing the Industrial Hospital contracts. And we used to meet once a month in one of the offices and Mr. Kirk would go over the results of the previous month. There was—this goes back twenty years and the details are rather faint in my mind, or rather hazy—but there was some sort of arrangement whereby our compensation depended upon how much the association made. And for some strange reason they never made anything out of the contracts. They were always running at a loss, yet they were extremely anxious to keep those contracts.

Mr. Marcus: Well, I move to have that stricken unless the Doctor can state the basis on which he has made this last statement. Do you have any personal knowledge of that?

A. Personal knowledge? Yes. I was there at every meeting.

1390 Mr. Marcus: I mean personal knowledge as to whether or not the Association actually had a loss.

A. Except my income was based on what they made and my income was extremely scant.

Mr. Marcus: Well, the question was—

The Court: No, no. Let Mr. Jaureguy question the witness. Go ahead, Mr. Jaureguy.

Mr. Jaureguy:

Q. And what happened to those contracts? A. Pardon?

Q. You were telling about the contracts and you hadn't finished talking about them because you were still receiving this scant compensation when you were interrupted. A. And, as I say, each month Mr. Kirk and his accountant would meet with the group of doctors in one of the offices and go over the results of the month preceding, and it became such a farce so far as compensation was concerned that we became, got up in arms and rebelled against the thing, and I think that you have letters that I have written to Mr. Kirk stating my position, that I was going to withdraw from the service, which was around 1933 or '4, I believe.

Q. Yes, we have letters in the file. A. And it was because not only of the meager income that we got for our services but also because we were directed very distinctly in the care of our patients and what we should do with them, and I believe that that is in the files.

1391 Q. Yes. Then you continued taking care of patients for these hospital associations until about when? A. 1937, I believe.

Q. What happened then? A. The thing came to a head so we all revolted and decided we weren't going to do it at all any more.

Q. You say you all— A. We formed a partnership.

Q. Where was this? A. In Oregon City and Clackamas County. We formed a partnership to take care of these contracts at the paper mills.

Q. What did you call that partnership? A. It's had various names, but I think it was the Clackamas County Physicians' Association.

Q. And then did you write contracts, did this physicians' association write contracts? A. We wrote contracts with the paper mills to start with.

Q. Then from then on what was your relationship—A. Pardon?

Q. From then on, from the time of the formation of that partnership, what was your relation with commercial hospital associations? A. I have had no relations with them since that time.

Q. If any of their members came into your office what did you do about it? A. There were a number of
1392 my patients who had contracts with the National and I said simply, told them they were my patients and I would very gladly take care of them, but whatever arrangements they had for the payment of it was their own business, not mine.

Q. And did you give them itemized bills? A. We gave them itemized bills. We didn't give all the information sometimes we were asked by Mr. Bechtold or Mr. Kirk to give because that seemed to be beyond the requirements, but we gave them itemized bills so they could collect on them.

Q. And has that practice on your part continued up to this time? A. That practice has continued up to this time.

Q. And the adoption of that practice, was that the result of any orders or directions or coercion or suggestions of any medical society? A. So far as I am concerned there has never been any coercion in my practice.

Q. You mean by anybody? A. By anybody.

Q. Now, you have been, you were President of the State Medical Society I think you said in 1944 and '45. A. That is right.

Q. And before that you were Vice-President? A. And the year before that I was Vice-President, and be-
1393 fore that on the Council.

Q. And how long have you been a member of the Council? A. '41, fall of 1941.

Q. And continuously since then? A. Continuously since then.

Q. And during any of that time has there been any effort on the part of the State Medical Society to direct doctors as to what their relationship should be with commercial hospital associations? A. The State Medical Society—

Mr. Marcus: Your Honor, objection on the ground that the facts are what the documents show them to be and not what this witness, the conclusion of this witness.

The Court: Overruled. Proceed.

A. The State Medical Society has no power to coerce an individual.

Mr. Jaureguy:

Q. Has what? A. The State Medical Society has no power to coerce the individual.

Q. Has there been any—

Mr. Marcus: Move to have that stricken, your Honor. It is merely conclusion of this witness.

The Court: Motion denied.

Mr. Jaureguy:

Q. And has there been any attempt on the part of the State Medical Society, whether it has the power or not, to direct doctors of the State of Oregon as to what
1394 their relationships should be with commercial hospital associations? A. Not so far as I know. Discussion as to policy has been raised, but no effort made to coerce individuals.

Q. Or to direct them? A. Or to direct them.

Q. And you have been sued in this case and I want to ask you whether you yourself individually or in conjunction with other doctors have ever tried to direct or coerce or influence other doctors as to what their policy should be or their relationships to the hospital associations? A. No. I have always felt that was my business and it was the business of the other man to do as he pleased.

Q. And have you ever endeavored to induce or coerce or suggest to hospitals that they shouldn't permit doctors on their staffs on account of any activity of the doctor with the hospital associations? A. The only hospital connection that I have is with a private hospital which is run by a man who is an extreme individualist himself and any coercion I might make would be futile.

Q. Well, have you tried to make any? A. I have not tried to make any.

Well, aside from the hospital with which you are connected, have you either individually or in collaboration or connection with others ever tried to influence any hospital in the State of Oregon to keep doctors off the staffs on

account of any connection with pre-paid medical
1395 plans? A. I have not.

Q. Have you ever either individually or in connection or collaboration with others ever endeavored to induce or coerce any hospitals in the State of Oregon to refuse to treat patients because they are members of any pre-paid medical plan? A. No.

Q. Have you either individually or in collaboration or conference with others ever endeavored to induce doctors not to consult with doctors who were associated with pre-paid medical plans? A. No. When you ask if we have ever tried to influence men not to work for the associations, in 1936 our association, our partnership, agreed that we would service only our own contracts. Nothing has ever been done to implement that, and it is common knowledge in our town that certain members of our group do take tickets from both the National and Industrial Hospital Associations and serve their contracts, but so far as I know nothing has ever been done to discipline them or to persuade them not to do so.

Q. Has your medical society, that is the Clackamas County Medical Society— A. Yes.

Q. Has it ever either in the election of officers or appointment of members on committees or in any other manner discriminated against any of your members
1396 because of any connection they might have with pre-paid medical care plans?

Mr. Marcus: There is no foundation laid for that question, your Honor. I wish to object on that ground. There is no showing he has any personal knowledge of what the Clackamas County Society did.

Mr. Jaureguy: I will withdraw the question temporarily.

Q. Does your Medical Society have meetings? A. We usually meet once a month, except in the summertime.

Q. And have you attended those meetings? A. I usually attend them, with the usual absences that may come from just cause.

Q. And are you acquainted with the affairs of the Society and its committees and how it operates? A. I am.

Q. And does that acquaintance go back to some time prior to 1936? A. It goes back to the time, since there ever has been a society, since there has been a society in our town.

Q. And is it continuous since then? A. It's been continuous.

Q. Now, I want to ask you whether or not your society has, either in the election of officers or appointment of members of committees or in any other manner discriminated against any doctors on account of any connection they might have with pre-paid medical care plans?
1397 A. There has been no discrimination, as far as I know.

Q. Or has there ever been any attempt that has come to your attention during this period of time of any other medical society, including the State Medical Society, endeavoring to influence you or the Clackamas County Medical Society so to discriminate against doctors? A. The only instances that I know have been the disciplinary measures taken by the Multnomah County Medical Society.

Q. That was members of Multnomah County? A. Yes. And that purely is hearsay.

Q. Yes. A. The only instance I know of any attempt made to tell me what to do was by the Multnomah Industrial Health Association.

Q. Oh, yes. A. And I think in the files there is a letter in there, my response to that.

Q. Will you just tell what that was? A. When the Multnomah Industrial Health Association was founded I believe those who became members agreed not to service the commercial hospital associations. When the Industrial Hospital Association got the contract for the large paper mills and had made overtures to some of us to help them carry on their contracts we felt that we had a local duty because so many of those men were our patients, and we agreed to service them, and we were taken to task
1398 by the Multnomah Industrial Health Association.

Q. That was Dr. Dammasch? A. I believe it was Dr. Dammasch. And my reply to that was that the best way to handle those things was not by forcing men to refuse, forcing men to refuse to service those contracts, but to offer a better contract and give a better service.

Q. Now—

The Court: Pardon me for breaking your examination. I was wondering, for the convenience of these The Dalles men, do they want to get away this afternoon?

Mr. Jaureguy: Their train leaves about 5:00, but we are—

The Court: Would you like to cross examine Dr. Vogt now?

Mr. Marcus: Yes, your Honor.

Mr. Jaureguy: Dr. McLean, would you let Dr. Vogt resume the stand?

A. Surely.

(Witness temporarily excused.)

1399 DR. PAUL VOGT, a witness on behalf of Defendants, having previously been duly sworn, resumed the stand and further testified as follows:

Cross Examination (Continued)

By Mr. Marcus:

Q. I had asked you whether these documents show that The Dalles Clinic and Hospital dealt directly with the National Hospital Association for the years 1935 to 1941? A. They do.

Q. Doctor, did you work in the business office of The Dalles Clinic or hospital during the period 1936 to 1941? A. I have never worked in the business office.

Q. You have no personal knowledge of any of these documents? These are some documents given to you by someone in the business office, is that correct? A. Other than having seen them removed from the file.

Q. I say, you have no knowledge— A. I have seen them removed from the file.

Q. But, other than that, you have no knowledge of these documents? A. No.

Q. Doctor, you have testified with respect to two instances, from these documents, where the amount charged by The Dalles Clinic was not paid in full by the
1400 National Hospital Association Is that not so? A. The accounts largely show that they have been discounted.

Q. When you say "discounted" do you mean not paid in full? A. That is correct.

Q. Do you have any knowledge of the circumstances under which non-payment in full was made on these particular accounts? A. I do not have any individual knowledge of the accounts.

Q. So you don't know, Doctor, do you, whether or not in each of these instances it might have been a matter of coverage? As far as you know, you don't know, is that correct? A. That is possible.

Q. Well, do you or do you not know? A. No, I can't say from personal knowledge of all of these accounts.

Q. In other words, you don't know why in any of these instances a bill was not paid in full by the National Hospital Association, is that correct? A. It was my idea at the time that the bills were generally discounted.

Q. Well, Doctor,—

Mr. Jaureguy: Let him finish, please.

Mr. Marcus:

Q. Doctor, didn't you just testify you had no knowledge of the business office of The Dalles Clinic? A. I said I did not work in the business office.

Q. As to these specific documents which you
1401 brought with you and from which you testified on direct, is it or is it not true that you have no knowledge personally as to the circumstances under which payment was not made in full by the National Hospital Association? A. That is correct.

Q. Doctor, were you the person who asked that these particular documents be taken from the files of the clinic, The Dalles Clinic? A. Yes. I asked the bookkeeper to withdraw records from the files as examples of the clinic and the hospital's dealings with the National Hospital Association.

Q. Did you ask that they give you any statement or document that showed payment in full, or did you merely ask for documents that showed this? A. I merely asked for documents relative to dealings with the National Hospital Association.

Q. You yourself did not attempt to pick out the documents? A. No, I didn't.

Q. Wasn't that by instructions of counsel for the defendants? A. No. Counsel did not know that I had these records until I appeared here this morning.

Q. But you were requested to appear as a witness in this case, were you not, by the defendants? A. Yes.

Q. Doctor, is it customary to make pathological reports; that is, in the State of Oregon is it customary to
1402 make pathological reports? A. What do you mean by that?

Q. I was going to ask as my next question whether you could explain the matter of pathological reports. A. If surgery is done and some organ removed and examined by a pathologist?

Q. Yes. Is that customary? A. I believe it is accepted procedure in standardized hospitals.

Q. Doctor, you have testified as to certain accounts for which The Dalles Clinic had not been paid in full. Do you have any personal knowledge as to whether The Dalles Clinic took up with the National any of these accounts, and what was done? A. No; I have no personal knowledge of that.

Q. I want to show you one of the documents that you have brought to court, and ask you to look at this document, and then I want to ask you a question about it.

That reveals a number of diathermy treatments given to a patient, does it not? Would you please say "Yes" or "No"— A. Yes.

Q. —because the Reporter cannot hear you nod. The answer is Yes? A. Yes.

Q. At the top does the statement appear "Authorization Received"? A. It says, "Authorization for Diathermy." It does not say whether it was received
1403 or requested.

Q. Don't you think it is proper both on the part of the patient, the hospital and the prepaid medical care organization in question to have that prepaid medical care organization informed, prior to such treatment, to determine whether or not they are obligated to pay for such treatment? A. There are two ways of looking at that. One, I think, is that the insurance agent which is responsible for the patient's care assumes those liabilities; the other is from the standpoint of the physician in getting information as to whether or not, for his and the patient's benefit, the insurance company will assume that liability.

Q. Let's take up the first. You think it is fair for the patient not to be informed prior to undergoing a series of diathermy treatments whether or not the association is liable for those payments, liable for those treatments? Don't you think the patient ought to know whether he is going to have to pay for the treatments or whether the association is going to have to pay for the treatments? A. That is what I just stated, that the doctor's relationship with the patient is such that he should know.

Q. The patient should know; is that your answer? A. The patient should know.

Q. He is entitled to know? A. That is correct.

Q. How about the doctor? Don't you think that
1404 the doctor, before embarking on a long series of diathermy treatments, is entitled to know from

whom he is going to get paid and whether or not he is going to get paid? A. That is correct.

Q. Don't you think that the prepaid medical care organization, before it either commits itself to an obligation of this sort or having to take the position that they are not liable for treatments if the treatments have already been given, should be informed prior to those treatments, so that they can find out and tell the doctor and the patient whether or not the organization is liable? A. That has been the policy of the National Hospital Association.

Q. Don't you think— A. And I think that is perfectly fair that they should know.

Q. Doctor, are you a member of the State Medical Society? A. Yes.

Q. And since when? A. 1937.

Q. Have you ever been an officer of that Society? A. No.

Q. Have you ever been on its Council? A. No.

Q. Or on any of its committees? A. No.

1405 Q. Are you a member of the Mid-Columbia Medical Society? A. Yes.

Q. And since when? A. 1937.

Q. Have you ever been an officer of that Society? A. No.

Q. Have you ever been on any of its committees? A. Yes.

Q. Could you tell on what committees and approximately when? A. The OPS Supervisory Committee.

Q. You have been on the OPS Supervisory Committee? A. Yes.

Q. Could you tell us during what period? A. I am on that now.

Q. Well, about how long? A. Since 1949.

Q. Is it true, Doctor, that in the reception room of The Dalles Clinic there is one of the OPS posters? A. That is correct.

Q. Any posters of the other hospital associations there? A. I believe the Blue Cross is represented.

Q. It is true, is it not, that in times gone by the OPS representatives and the Blue Cross representatives have come down to The Dalles and taken the doctors out to dinner?

Mr. Jaureguy: I object to all that line of testi-
1406 mony. In the first place, it is not within the scope of the direct and it is incompetent, irrelevant and immaterial.

The Court: Go ahead. He wants to know if you had your dinner.

A. Well, our meetings of the OPS Supervisory Committee are dinner meetings.

Mr. Marcus:

Q. Since you have stated you are a member of the Supervisory Committee, could you tell us a little about the functions of that committee? A. The functions of the committee are basically those of reviewing the relationships between the medical societies, the doctors who are participating under OPS, and the management of OPS, so that the participating physicians may be kept in closer contact with the management.

Q. Your functions involve, do they not, determination whether or not certain doctors have been charging more than other doctors? A. Fees are established by the fee schedule.

Q. Well, is that true of all types of medical and surgical work? A. The fee schedule is rather comprehensive. I can't, offhand, think of an exception.

Mr. Marcus: I would like to have this document marked.

(Photostatic copy of bulletin of Multnomah 1407 County Medical Society, Volume 9, No. 9, Page 3, thereupon marked Plaintiff's Identification No. 2054.)

Mr. Marcus:

Q. In view of what you have just said, I want to read from Plaintiff's Identification No. 2054, this document which has been marked for identification. It has to do with the May 1, 1945, Multnomah County Medical Society bulletin, and this is the statement which appears in that bulletin. It is headed "Open Letter to Society Tells of Fee Schedule:"

"Have you had a bill to OPS reduced or a request for a higher rate than is stated in the schedule of fees refused? If so, you may have wondered how this was done. It was done at the recommendation of the Advisory Committee and not arbitrarily by someone in the business office.

"The committee sees many bills and has learned to 'spot' those that are padded. That is an un-Hippocratic estimation, but it is true. These bills are reduced. Requests for

higher rates than the fee schedule calls for are reviewed and frequently the committee refuses these requests.

"The reasons for refusal are several, but the main reason is that a difficult case is balanced by an exceptionally easy one, leaving the average undisturbed. On a fee-for-service basis a charge for an appendectomy or any such procedure will be quoted. This becomes a contract and the one responsible for the bill expects you to
1408 adhere to that contract regardless of how complex the procedure may prove to be.

"A good example suggests itself in the requests that have come in for allowances of a larger fee for a hernia repair because the hernia proved to be a sliding hernia. If it became known that the fee for repair of sliding hernia was higher than the fee for repairing ordinary hernias, then all hernias would soon slide and we could not prove that they didn't.

"Nevertheless, your requests are given serious consideration by your Advisory Committee and that committee is the one responsible for alterations in your bills or refusals to allow increases. Service on that committee gives one a peculiar view of some medical problems."

Have you obtained a peculiar view, by virtue of your position on the Supervisory Committee?

Mr. Jaureguy: Your Honor, I want to object to that question or any other question based on that reading. That reading is from a publication by an organization that this witness does not belong to and refers to a supervisory committee of which he is not a member and it absolutely has no jurisdiction over him.

The Court: He may answer, if he can.

Mr. Marcus:

Q. The question, Doctor, was whether you have come to get a peculiar view of some medical problems
1409 as a result of being on a supervising committee, although I might ask before you answer that question just when you became a member? A. About ten months ago, when our pool was first established.

Q. I will ask that question, then. A. I don't believe so.

Q. Let me ask this question, then, Doctor: Do you still say that there hasn't been any occasion for your Supervisory Committee to determine whether or not a fee requested was reasonable? A. I think in reviewing most of

the bills in the last ten months, I think there has been one very minor alteration of a bill and that was on a basis of apparent bookkeeping duplication.

Q. It is true, though, is it not, Doctor, that at times doctors present bills for what they deem to be the reasonable value of their services, and then the Supervisory Committee has to determine whether or not that bill should be paid, in view of the schedule? A. We have had no problems in that respect.

Q. But that is a possibility, is it not? A. A possibility, yes.

Q. As a participating member of OPS and a member of the Supervisory Committee, you have probably received a good bit of OPS literature, have you not? A. Yes.

Q. And I assume that you are familiar with much of that literature? A. I read most of it, yes.

1410 Q. I want to ask you whether you are familiar with this particular provision—I am reading from Exhibit 126, "Oregon Physicians' Service, Operating Procedures and Schedules of Fees, effective February 1, 1948." This particular section is headed "Clear OPS Liability First," and then it reads:

"Except in emergencies, extensive treatment and/or diagnostic procedures should not be undertaken until after clearance has been received from the proper OPS business office. The receptionist or bookkeeper's routine for OPS cases should, if at all possible, provide for an adequate interval between the patient's first office visit and the start of extensive treatment and/or diagnostic work. Prepaid medical and hospital service plans will in many instances make more extensive procedures available to a patient than he could afford as a private patient."

Are you familiar with that provision, Doctor? A. Yes.

Q. Under that provision authorization is required, is it not, before extensive medical work is undertaken by doctors under OPS? A. That is what it states.

Q. Well, is it or is it not so? A. They request that cooperation and usually receive it.

Mr. Marcus: That is all.

1411 Redirect Examination

By Mr. Jaureguy:

Q. Mr. Marcus asked you whether these discounts may be due to a lack of coverage.

The first one of these statements is for toxic goiter, and the total charges for treatment of that toxic goiter were $106; then there was also "Lumbago" and the total charge was $2.50, making a total of $108.50, and the amount paid was $75. Would it be possible that part of it was toxic goiter coverage and part of it was not? A. My impression is that any liability is full coverage; responsible, rather, for the bill.

Q. So, in this case it was not on account of lack of coverage? A. That is my impression.

Q. This diathermy he asked you about, about getting authorization for that: You sent in a bill, the items varying from $1.50 to $2.50—no, from $1.00 to $2.50, various items. Were those for diathermy treatments? A. Not being acquainted with the case, I can't tell you exactly.

Q. If you got authorization for diathermy treatments— A. Apparently the words indicate it. However, the charge for diathermy is the same I think in each instance.

Q. These are $1.00, $1.50, $2.00 and $2.50. Your bill of $49.00 was cut down to $33.50. When they give you authorization for diathermy treatments, does that mean a
1412 certain number of treatments or something of that kind? A. That I couldn't tell you. I imagine they authorized diathermy as indicated, as required by the patient.

Q. I got the impression from Mr. Marcus' questions to you that he was of the opinion that the control which National exercised over you in operating on and treating patients was merely to be able to assure you that the case was covered by their contract.

Did you ever have any directions as to how you would take care of patients or whether you could or could not operate in cases where there was no question of coverage? A. In cases where there was no question of coverage you were allowed to proceed as you felt was indicated.

Q. Even to the extent of major operations? A. Provided they gave their approval on their coverage. In the few instances which I can recall—it has been some years ago—they desired you to use what conservative therapy you could first, prior to radical surgical procedures.

Q. You mean they asked you to? You said they desired. A. They suggested it to you.

Q. You mean when you would call them up on the telephone and ask permission for something they would ask you to do it some other way? A. Oh, they preferred to do it conservatively, if possible.

Q. Now, you were telling what this pamphlet
1413 stated about OPS. In your county, when handling OPS cases, do you get authorization from somebody in OPS? A. On some elective things you correspond with OPS as to whether or not the patient may be covered because there are certain instances like a tonsillectomy where a patient does not become eligible for such procedure until he has been covered by his contract for a certain period of time, say, a year. Then you check with them to see whether or not his coverage allows it.

1414 Mr. Jaureguy:

Q. That is, you consult to determine whether there is a coverage? A. Yes.

Q. But other than that do you consult them to determine the procedure that you must follow if there is a coverage? A. No.

Mr. Jaureguy: That is all.

Recross Examination

By Mr. Marcus:

Q. Now, Doctor, are you an expert on toxic goiters? A. No.

Q. You are not? A. No.

Q. You have never had occasion to treat a toxic goiter? A. I have had occasion to treat them, but not specializing in that particular field I refer them.

Q. And you wouldn't know whether or not that condition might have commenced prior to a certain time, that is prior to the time this treatment occurred, whether it was a period of five weeks, six months or a year, would you? You wouldn't have any way of knowing? A. I know nothing about the details of the case.

Q. So as far as you know the deduction from this bill might have resulted from a question of coverage?
1415 A. Ordinarily it's been my experience that a bill that is presented is either paid or not paid.

Q. Well, that is not the question that was asked you, Doctor, and if you—you say that has been your experience? You say that has been your experience, that a bill has been paid or not paid? A. What I meant was that reductions in the bill are not made on the basis of coverage.

Q. Well, you have just testified that you personally knew nothing about these various accounts. Is that so? A. That is what I said, yes.

Q. Well, and you know nothing about this particular toxic goiter account? A. That is what I said.

Q. And for all you know it might have, this deduction might have resulted because of a question of coverage? A. I know nothing about it.

Q. That is right. Is that right? Now, with respect to these diathermy treatments, as counsel for the defendants has pointed out to you, sometimes a charge of $2 was made, sometimes a charge of $2.50 was made. Now, it is entirely possible, is it not, Doctor, that under the schedule of fees of the National that they would not, that their schedule would not call for more than $2? A. I mentioned to counsel that I knew nothing—

1416 Q. You don't know, do you? A. —of that case either.

Q. Then, Doctor, I believe you made some statements as to the National suggesting that you perform one form of treatment rather than another. Is that something you have heard or is that a matter of your personal experience? A. That is a matter of my personal experience on a very few instances some years ago, between 1937 and '40, the details of which I am not sharp on.

Q. I see. And at this time you cannot recall whether or not the National might not have been justified in making these suggestions? A. As I say, it's been ten years approximately and I do not recall the details of the cases.

Q. Well, is the answer to my question Yes then? You don't recall at this time whether or not— A. Yes.

Q. —the reasons given by National might have justified their position? A. That is right.

Mr. Marcus: That is all.

Redirect Examination

By Mr. Jaureguy:

Q. Do you think a layman is ever justified in tell-
1417 ing a doctor how he will take care of his patient? A. No.

Mr. Jaureguy: That is what I thought.

Recross Examination

By Mr. Marcus:

Q. Doctor, you are acquainted with the fact, are you not, that the National was headed for some time by a doctor

and has had and does have doctors at the home office? A. That is quite correct.

Mr. Marcus: That is correct.

Redirect Examination

By Mr. Jaureguy:

Q. Did you ever talk to those doctors when you were given directions to follow one form of procedure or another? A. No.

Q. Who did you talk to? A. Either Mr. Bechtold or someone in the office.

The Court: Recess.

(Witness excused.)

(Short recess.)

1418 DR. EDWARD H. MCLEAN, one of Defendants herein, resumed the stand as a witness in behalf of Defendants and, having been previously duly sworn, was examined and testified further as follows:

Direct Examination

By Mr. Jaureguy:

Q. Now, Doctor, do you know whether any of the members of this partnership of doctors in Oregon City takes tickets of commercial hospital associations? A. The men at Canby take tickets from the Doernbecher, which is protected by the National Hospital Association.

Q. And is there any endeavor on the part of members of your group or partnership to prevent that? A. Nothing more than a "tut tut" or something like that.

Q. And has this partnership, that is the Association of Clackamas County Physicians, has it ever obtained a monopoly of pre-paid medical care? A. No, it has not.

Q. Has there been any endeavor to obtain a monopoly? A. No, there has not.

Q. Have you any desire to obtain a monopoly? A. I think monopolies are out of the question because it has been our experience as we have gone along, and our views may have changed over a period of twenty or thirty years, that even though your competitor is in the field, even

1419 though he may have a contract, he has developed a field for pre-paid medical care that makes it easier

for the other group to go in and sell pre-paid medical care. I think that has been the experience all the way along.

Q. Now, are you one of the OPS cooperating Physicians too? A. Yes,

Q. And you have been since when? A. Since its inception.

Q. And what are your views as to whether it would be desirable for OPS to get a monopoly on the pre-paid medical care field?

Mr. Marcus: I object to that, your Honor. It is clearly irrelevant.

The Court: Overruled.

A. I don't think it would be a good idea. In fact, I don't think that the officials or the management of OPS want a monopoly for the same reason that I have just expressed, that if the field is tilled even by your competitor it is still a tilled field and better for your crop.

Q. And do you think that it gives more of an incentive to the managers if they have competition? A. It certainly does.

The Court: What is the connection of the Clackamas group to OPS?

A. None whatever, except we are friendly.

The Court: They are not a local unit?

1420 A. Oh—

Mr. Jaureguy:

Q. You are not a local pool? A. No. We are an independent partnership.

Q. Oh, yes. So OPS does not write contracts in your county for local employees? A. No, not for local employees. There are people in Clackamas County who have OPS contracts.

The Court: Does his partnership, as he calls it, include all of Clackamas County?

A. All who wish to belong.

The Court: But not all in fact?

A. I think there are two in Clackamas County, your Honor, who do not belong to the Association, one or two.

The Court: Is his legal term correct that it is a partnership?

Mr. Jaureguy: It is what?

The Court: That it is a partnership?

A. It is a partnership, yes.

Mr. Jaureguy: It is a partnership, yes.

The Court: How many doctors are there?

A. I cannot answer that accurately, but I should say there are perhaps 24 or 25.

The Court: It's like a Wall Street law firm, they don't know how many partners there are.

Mr. Jaureguy: I think technically this would be a
1421 joint venture, that it isn't a partnership so far as private patients are concerned. A. Not so far as private patients are concerned.

Q. Merely as far as the pre-paid medical program is concerned? A. As far as the pre-paid medical.

Q. And is there any distinction between this group of the partnership and the medical society? A. Yes, yes. It is entirely distinct.

Q. Their meetings are distinct? A. Their meetings are distinct, and their procedures are distinct.

Q. Now, coming back to OPS, Clackamas County is neither a local pool nor part of the State pool in the sense that OPS goes into your county to write contracts, is that correct? A. That is right.

Q. It differs then from Jackson County, which is a local pool? A. That is right.

Q. Or from some of the districts which are in the State pool, and it is one of these counties that is governed by, it is one of these counties that has a doctor-sponsored prepaid medical plan? A. That is right.

Mr. Jaureguy: You may take the witness.

Cross Examination

By Mr. Marcus:

Q. Doctor, you have been very active in Medical
1422 Society affairs, have you not? A. I have held various offices, yes.

Q. And the answer is Yes? A. The answer is Yes.

Mr. Jaureguy: Not necessarily.

Mr. Marcus:

Q. Will you tell us what offices you have held with the State Medical Society? A. Beginning in 1941 I became a Councillor—oh, beginning in 1937 I was on the Publication Committee of the Northwest Medicine. In 1941 I became Councillor; in 1942 I became First Vice-President, 1942 or '3, I have forgotten which. In 1943 I was President-elect. In 1944 and '5, President; and in 1946 I was elected alternate delegate to the American Medical Association, and late in 1946, replacing the late Dr. Frank Mount, I was made delegate.

The Court What were your schools? These lawyers forgot to give you a chance to tell that.

A. I took my pre-medics at Princeton University, medicine at Columbia, and hospital work at St. Luke's and Sloan Hospital for Women in New York.

The Court: What state are you a native of?

A. Oregon, sir.

The Court: Oregon City?

A. No. Klamath Falls. Linkville, if you please.

The Court: That is one on me. I never heard of
1423 you down there.

A. Linkville is the old name for Klamath Falls.

Mr. Marcus:

Q. And how long have you been a member of the Clackamas County Medical Society? A. Since its inception. I have forgotten just what date it was organized. It used to be that we had no society there and we were members of the Multnomah County Medical Society, and about 1935 or '6 Clackamas County Medical Society was organized.

Q. And, Doctor, have you ever held any office with that? A. I have never held any office in Clackamas County Medical Society.

Q. Have you ever been on any of the committees of the Clackamas County Medical Society? A. Not that I recall. It may be, but I don't recall any. Certainly they didn't impress me very much if I were.

Q. Have you ever been a delegate of the Clackamas County Medical Society to the State Society? A. I have never been a duly elected or appointed delegate, but I

have been seated because I was the only member of Clackamas County at the State Medical Society meeting at the time.

Q. Have you been on the Board of Trustees of Northwest Medicine, Doctor? A. Yes.

Q. And about when? A. It is a little difficult to
1424 remember dates. I was elected delegate at the State Medical Society Meeting at The Dalles, and I think that was in, oh, about '32 or '3, and I held office until last year when I was retired.

Q. Well, Doctor, I wonder, are we referring to the same thing, the Board of Trustees of the Northwest Medicine? A. Yes. I am referring to the Board of Trustees of the Northwest Medicine.

Q. Now, Doctor, by virtue of those positions you have held would you say that you had some part in framing the policies of the State Society? A. I should say probably so, yes.

The Court: Is this man a defendant? Has that been brought out?

Mr. Marcus: Yes, he is a defendant.

The Court: That wasn't brought out?

Mr. Jaureguy: Yes, that was brought out.

Mr. Marcus:

Q. You have been on some of the committees which have had to do with pre-paid medical care, have you not, Doctor? A. I believe I have not. It is not customary to put one of the major officers on one of those committees, and most of the time I have been associated with the Council I have been a major officer.

Q. You have participated, though, have you not,
1425 in discussions with respect to pre-paid medical care which have come up in the Society? A. Whenever they have come up before the Council.

Q. And as a member of the Council you have taken certain action with respect to said policies? A. Naturally so.

Q. Doctor, am I correct in my recollection that you said that the Clackamas County Physicians' Association was not affiliated with OPS? A. May I ask you to define "affiliated"?

Q. I am asking you a simple question, Doctor. A. I would like to know what your connotation of the word "affiliate" means. We work with them, yes, but there is no

organic connection between the Clackamas County Physicians' Association and the OPS.

Q. Doctor, do you or do you not know whether it is commonly understood in the State of Oregon that your association is affiliated with the OPS? A. Our association is not affiliated with OPS.

Q. You state you have been a delegate to the American Medical Association, Doctor. A. I have.

Q. I show you Plaintiff's Exhibit 3, which is a pamphlet put out by the Council on Medical Service of the American Medical Association in 1947 entitled "Voluntary Pre-
1426 payment Medical Care Plans". On page 61 this appears:

"Oregon Physicians' Service. Organized in December, 1941 as a pre-payment medical care plan under the State laws. Four county plans continue to operate as local plans but are affiliated with the State plan. These four local plans are"—

and the fourth one is Clackamas County Physicians' Association, Oregon City, Oregon. Now, do you dispute that, Doctor? A. I—

Q. Just a minute. I am asking you a specific question. Do you dispute that? A. I am not going to answer that question until you tell me what you mean by "affiliate".

Q. Well, apparently the American Medical Association knows what they mean by it. A. The American Medical Association may be wrong. Will you please define what you mean by "affiliated."

Q. I am asking you the question, Doctor. Do you dispute the statement made in this pamphlet that the Clackamas County Physicians' Association is affiliated with OPS? A. I dispute it if "affiliate" means one thing, and I accept it if it means another.

Q. Do you dispute, Doctor, the fact that it is generally understood in Oregon that the Clackamas County Physicians' Association is affiliated with OPS? A. I must
1427 get back again to a definition of the word "affiliate".

Q. I am asking you your understanding of what is generally understood in the State of Oregon. A. What I understand as "affiliated" I would say No, the Clackamas County Association is an entirely independent thing. We have absolutely no control from Oregon Physicians' Service. We do just exactly as we please.

Q. Now, Doctor, is it your understanding that this pamphlet has not come to the attention of the Oregon State

Medical Society? A. I don't know whether it has or not. There has certainly been no official action taken on it.

Q. You would not say that it has not? A. Of the individual members, sure.

Q. I am talking about the State Society. A. I couldn't tell you that.

Q. You would assume, would you not— A. Well, naturally—

Q. —that a pamphlet— A. —it's gone to the members.

Q. Doctor, would you kindly refrain from answering my question until I have finished the question?

Mr. Jaureguy: I am going to ask that Mr. Marcus kindly refrain from asking a question until the witness has finished his answer.

1428 The Court: I suggest you stay out of it. Mr. Marcus has been waiting for this.

Mr. Jaureguy: That is a good idea, your Honor. Thank you.

Mr. Marcus:

Q. You would assume, Doctor, that this pamphlet has been received by the office of the State Medical Society? A. I would assume that it has, yes.

Q. Would you assume that the information contained in here came from the Oregon State Medical Society? A. I don't know whether it did or not.

Q. Doctor, is the Physicians' Association of Clackamas County approved by the State Medical Society? A. I believe so. I don't know that we have ever asked for approval. We certainly haven't been disapproved.

Q. Now, I show you Exhibit 1203, which is a pamphlet issued by the Oregon Physicians' Service and ask you to kindly look at that document. A. I believe I have seen that.

Q. You have no reason to dispute any statements made? A. I don't believe so.

Q. Would you say then as far as you know that your association has been approved by the State Society? A. I don' know. As far as I know it has not been disapproved by it. I don't recall that we have ever asked for approval. I may be in error there. I have never been an officer of the association or the County Medical Society.

1429 Q. You will admit, though, Doctor, will you not, that your association cooperates with the OPS? A.

I will admit they cooperate with the OPS and the affiliation—

Q. And are you yourself one of the cooperating physicians of OPS? A. I am.

Q. Have you ever held any position with OPS? A. I never have.

The Court: What does that mean? OPS operates in a limited way in that county.

A. OPS operates throughout the State, your Honor.

Mr. Marcus: I will come to that in a minute, your Honor. First I would like to ask another question.

Q. Doctor, have you been connected with the local Blue Cross? A. Yes. I am one of the Directors.

Q. And how long have you had that position? A. Since 1944 or '45, I have forgotten which.

Q. Now, Doctor, you have stated that you are all for competition? A. Pardon?

Q. I understood you to say that you believe competition is a fine thing. A. I think competition is rather desirable.

Q. And you have always believed so, is that right?

1430 A. I have always believed so.

Q. You are familiar, Doctor, are you not, with the negotiations that took place over a number of years between the Northwest Hospital Service Plan, which was the local Blue Cross, and OPS? A. In a general way, yes.

Q. And those negotiations were for the purpose of eliminating competion, were they not? A. I do not believe so.

Q. Will you state categorically No? A. I will say I do not believe so.

Q. And you wouldn't state categorically No? A. I don't know whether they were or not, but I will say I do not believe so.

Q. Did you participate in those negotiations? A. In a limited way when I was President of the Society.

Q. I understand you have just said that you have been a member of the Board of Directors of the Northwest Service Plan since 1944. A. I was. The negotiations were done by committee.

Q. Well, I assume that the Board of Directors were kept informed as to— A. Up until a short while ago.

Q. —of the negotiations by the committee, were they not? A. Up until a short while ago the Board of Directors

met annually and a report was made by the Executive Committee to the Board of Directors of proceedings during the year.

Q. It is your position then that a committee of the Northwest Hospital Service Plan could undertake negotiations of this sort without any knowledge or direction of the Board of Directors? A. They report to the Board of Directors.

Q. They do report to the Board of Directors. Now, Doctor, is it not true that these negotiations were designed to remove OPS from the hospital service field, prepaid medical service field, and to remove Northwest Hospital Service Plan from the medical service field? A. May I correct that a little bit?

Q. Well, I am asking you. A. I will have to answer the question No, because it contained parts that would have to be said No. If you will let me qualify I will answer your question.

Q. Go ahead, Doctor. A. At the time the negotiations were in progress the Northwest Hospital Association was not in the medical field. It was purely in the hospital field. And I will say Yes to your question if it was designed to remove the OPS from the hospital field.

Q. And that is your idea of competition? A. My idea of competition is to sell something you own and not something you don't own.

Q. Doctor, you say you never had anything to do with trying to restrain the relations of these hospital associations with hospitals? A. I can't hear you. You are talking to the window, please.

Q. I think on direct examination, Doctor, you stated that you never had anything to do with attempting to restrain these hospital associations in their relations with hospitals. A. I think that is correct.

Q. You think that is correct? You are not as sure as you were before? A. I will state that is correct. I am just as sure as I was before.

Q. Now, Doctor, I am reading from Exhibit 1197. The Executive Committee Meeting of March 21, 1939, of the Clackamas Association:

"In order to check on the rumor that some of the doctors were treating cases of National or Industrial Hospital Association it was decided to ask Dr. McLean, as Chairman of the Hospital Committee, to learn whether or not hospitals were admitting any hospital cases for these as-

sociations, also if the Hospital Committee thinks it would facilitate their supervision of the association cases the association would be glad to provide colored tags for association cases." Does that refresh your recollection? A. I recall no activity that was ever taken by that committee.

Q. There was such a committee, though? A. I was on a Hospital Committee that had nothing to do with National Hospital Association or anything else. It had to do with determining how long patients were staying in hos-
1434 pitals and whether or not that that hospital stay was justified.

Q. You don't contradict, Doctor, do you, that there was this Executive Committee? A. If that is the minutes of the Executive Committee, I can't contradict it because I have no knowledge otherwise.

Q. It was the action of the Executive Committee of your association? A. I don't recall any such thing, but you have a record there of it, I believe.

Q. You don't recall it? A. I don't recall it because nothing was ever done about it.

Q. Now, Doctor, to come back to this matter of competition, it is true, is it not, that in Clackamas County the Oregon Physicians' Service does not take local accounts? A. I believe that is true.

Q. And is that by virtue of any understanding between your group down there and OPS? A. It is by virtue of a rather deep-seated and fundamental principle of medical ethics that doctors do not go into one community and try to get the work that is supplied by other doctors.

Q. So that there is an area somewhere in which competition is not the thing, is that so, Doctor? A. There is competition in Clackamas County.

Q. You have just stated, Doctor, have you not, that it is contrary to medical ethics for one group of doctors to go into the area where another group of doctors
1434-A operate. A. Unless they are willing to have them come.

1435 Q. So that there is an area where you feel competition is not the proper thing? A. I do not feel that the doctors in the State of Washington should come into Oregon and treat or try to get patients that the Oregon doctors are taking care of.

Q. Do you regard the Oregon Physicians' Service as being composed of State of Washington doctors? A. No. I merely use that as an analogy, if you please.

Q. Well, it is not an accurate analogy, then, is it? A. That has to be determined. You think it is not.

Q. Doctor, on direct examination the question arose as to whether during the '30s, in your dealings with Industrial Hospital Association, whether or not the Industrial Hospital Association actually suffered losses.

It is true, is it not, during the early '30s there was a depression? A. Such is my recollection.

Q. Do you think that could have had or may have had something to do with the losses suffered by Industrial? A. I don't know whether it did or not. Their fees and so forth were adjusted to that. They took contracts during the depression and could have adjusted their fee schedule to it. I don't know. I am not an accountant, certainly.

Q. You have no reason to believe that they were less affected than the general run of enterprises in the country during the depression? A. I have no reason to be-
1436 lieve such a thing, except that they took these contracts during a depression and were not affected by any backwash, by commitments they had made before when times were good.

Q. You would assume, would you not, that if they did not take contracts during the depression they would soon be out of business? A. But with good business management, couldn't they have adjusted their indemnity and fees to the times?

Q. I am asking you a question, Doctor. A. All right. I will answer that question.

Q. You seem to imply that for some reason Industrial Hospital Association ought to have been better able to weather the depression than most enterprises. Isn't it true that you had no knowledge as to whether or not it should have been able to? A. No, I have no knowledge as to what they could do.

Q. Isn't it true, Doctor, that during those years some of your private patients were unable to pay you? A. It has been true throughout all the years that my private patients have been unable to pay me, even in lush times.

Q. As a participating physician, have you always been paid in full? A. No. As a participating physician I might not be paid in full because it is more or less of a partnership and we accept the liabilities as well as the
1437 benefits.

Q. Since you have been with these prepaid medical care organizations for some time, would you not consider it to be true that no prepaid medical organization

could exist for any extended time if they paid without question all bills that were sent in to them? A. I think all bills have to be audited, surely.

Q. You are acquainted, Doctor, are you not, with the OPS requirement as to authorization? A. I am acquainted with OPS requirements. Again, it comes down to a question of—

Q. I am asking you a question, Doctor. A. Yes. All right. I am acquainted with their requirements.

Q. Does your association have any such requirement? A. Our own association has the requirement to find out whether the patient is covered or not, whether the association is liable.

Q. Are doctors supposed to ascertain that? A. For his own protection as well as the patient's protection.

Q. You said, Doctor, I believe, on direct examination, that the State Society had no power to compel doctors to do anything. A. I said so.

Q. Doctor, you are acquainted, are you not, with the fact that the constitution and bylaws of the State Society provide for disciplinary proceedings? A. The State Society does not discipline the individual. It asks the
1438 county society to discipline the individual.

Q. I want to ask you a few questions with respect to that. First, is it not true that the State Society has powers of review with respect to disciplinary proceedings? A. On appeal.

Q. That is right. A. On appeal.

Q. So that if a member of a local society were disciplined by that local society it would still remain in the determination of the State Society on appeal as to whether or not that particular individual should be allowed to remain in the Society, isn't that so? A. I believe that is so, but he can still remain in the county society.

Q. Well, I assume if he had already been disciplined by the county society and expelled he would be out of both societies? A. That is true.

Q. Is it your position, Doctor, that the State Society could not take original action? A. That is my position, that the State Society cannot take original action.

Q. Is that your understanding? A. That is my understanding.

Q. Of course, you would be willing to abide with respect to that by what appears in the constitution and by-
1439 laws? A. I would have to do that, I am sure.

Q. Were you a member of the Council of the

State Society during this period when there were rather extensive disciplinary proceedings brought by the Multnomah Medical Society? A. I was not.

Q. You were a member of the State Society, were you not? A. I was a member of the State Society.

Q. And you were on the Board of Trustees of Northwest Medicine? A. I was on the Board of Trustees of Northwest Medicine, yes.

Q. Doctor, when did you say that you ceased to take tickets from the hospital associations? A. I ceased definitely around 1936. I can't recall, because it wasn't that important to me, but I began to make my complaints around about 1933 and began to withdraw myself from certain activities of the associations.

Q. Had you any dealings with Prudential Hospital Association? A. I never had any dealings with Prudential Hospital Association, as far as I recall.

Q. As I understand it, you have confined your direct dealings, in so far as prepaid medical care organizations are concerned, to OPS? A. To OPS and the Clackamas County Society.

Q. And not with the Prudential Hospital Association? A. I have never had any call to deal with the Prudential Hospital Association.

1440 Q. Am I to understand you would have been willing to deal directly with them? A. No, you are not to understand that.

Q. Doctor, during this period when you stated you had trouble with these hospital associations with respect to fees, it is true, is it not, that you took up with them particular instances where this occurred? A. Yes.

Q. And is it not true that in some of those instances they paid you the full amount and in some instances they did not? A. That is true.

Q. Doctor, it is true, is it not, that you have refused to deal directly with the Industrial Hospital Association with respect to employes of the California Packing Corporation? A. I don't know with whom I have refused to deal, what employes I refused to deal with. I have refused to deal directly with the Industrial Hospital Association. That is blanket. I will admit that. I don't know for whom they worked.

Q. Well, Doctor, I am reading from Exhibit 592 and am going to ask you, after reading this exhibit, whether you agree with what is stated there.

This is a letter from the California Packing Corporation,

dated March 10, 1947, to the Industrial Hospital Association:

"We are attaching a copy of a letter which we
1441 received from Dr. McLean, with respect to payment for medical services in connection with a hernia operation of (patient's name).

"We have no desire to foster or promote the inane activities on the part of some doctors with respect to accepting their fees for medical service. Consequently, we do not want to be a party to this arrangement. On the other hand, if you desire to deal through the Industrial Claims & Inspection Service, sending them your check for Dr. McLean's fee and then letting them remit to the doctor, that of course is a matter which your organization will have to decide."

Do you agree with the comment made? A. No, I don't agree with the word "inane."

(Photostatic copy of memorandum of board meeting of representatives of Northwest Hospital Service Plan and Oregon Physicians' Service, February 4, 1945, thereupon marked Plaintiff's Identification No. 2055.)

Mr. Marcus:

Q. A little while ago, when I was interrogating you with respect to the Northwest Hospital Service Plan, you stated that negotiations between that plan and OPS were undertaken by a committee? A. That is my recollection.

Q. And you had nothing to do with that com-
1442 mittee? A. I had nothing to do with the committee.

Q. Were any negotiations undertaken by the board itself? A. There was one dinner meeting which I attended at which there was discussion of the matter.

Q. Well, referring to Exhibit marked for Identification No. 2055, which is a memorandum of a board meeting of representatives of the Northwest Hospital Service Plan and the Oregon Physicians' Service, held Sunday, February 4, 1945, at the Benson Hotel, Portland, Oregon: It says "Dr. E. H. McLean acted as chairman."

Do you recall that? A. I recall that.

Q. "The meeting was called for the purpose of discussing the desirability of a co-ordinated plan whereby Oregon Physicians' Service would underwrite the medical-surgical contract and Northwest Hospital Service Plan would assume liability of the hospital service underwriting.

Do you recall that? A. Yes.

Q. It would appear, Doctor, would it not, that those negotiations were undertaken not only by a committee of the Northwest Hospital Service Plan but the board itself? A. As I recall it, that was the initiation of the procedure and further negotiations were by a committee.

Q. You understand that this is dated February 4,
1443 1945? A. I understand that thoroughly.

Q. And it is your understanding that negotiations had not started prior to that time? A. Except tentatively. Certainly, as a member of the board I had no relation with it except at that time.

Q. As far as you know, negotiations may have been started prior to that time? A. I think there were conversations regarding it.

Q. Between whom? A. Between the directors.

Q. Well, between representatives of the two plans? A. Between the executive committee of the one plan and the executive committee of the other, as far as I know. I couldn't tell you.

Q. From this document, Doctor, it would appear that you yourself participated. A. I participated at that time. That is the only time, as far as I know, that I participated, and I participated as presiding officer because I was the President of the Medical Society at the time.

Q. And that is the only action you took at that meeting? A. As far as I can recall.

Q. Let me read another passage. A. Go ahead.

Q. "Upon motion made by Mr. MacNaughton, a
1444 resolution was adopted as follows: That it is the sense of this meeting that joint operation in selling of medical and surgical coverage by the Oregon Physicians' Service and the Northwest Hospital Service Plan is desirable and that a committee of three representatives from each organization be appointed to immediately outline a program for accomplishing such co-ordination, to be submitted to the respective boards of trustees at the earliest possible date."

There is nothing in this document which indicates you voted against that resolution? A. I was the presiding officer, if you please. I did not have a vote.

Q. Did you make any statement in opposition to such resolution at that time? A. As presiding officer, one presides. A statement in opposition to the resolution would not have been in order from the presiding officer.

Q. Let me ask you this, Doctor: Were you opposed to